***United States Court of Appeals***

***for the Second Circuit***

# TRANSCRIPT

# 75-7061

## UNITED STATES COURT OF APPEALS

*for the*

## SECOND CIRCUIT

B

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUDGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADR, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

TRANSCRIPT

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DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs Appellants and Intervening Plaintiffs-Appellants
40 West 57th Street
New York, New York 10019
757-5050

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COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

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TRINITY EPISCOPAL SCHOOL CORP., et al,

and

ROLAND N. KARLAN, et al, 71 Civ. 4315

against

GEORGE ROMNEY, et al.

April 23, 1974

(Trial resumed)

W A L T E R F R I E D , resumed.

THE COURT: Good morning, gentlemen. Will you please proceed.

MR. MORRIS: Your Honor, there is one preliminary thing before I complete my redirect.

We respect to the question of the figures, which we are agreeing to stipulate on, we had a discussion with Mr. Gold this morning and he tells me that he anticipates having those figures ready for us by Thursday morning and I want the Court --

THE COURT: When you say figures, you mean the schedules?

MR. MORRIS: The figures on the allocation

of families to the different units.

THE COURT: Yes, but up to now you have been referring to them as the schedule?

MR. MORRIS: Yes.

THE COURT: We are talking about the same thing?

MR. MORRIS: That's right. Since he has indicated that he will have the figures on Thursday, I want the Court to know that we are arranging our witnesses accordingly so that we will have them at the time after we receive the figures.

THE COURT: I understand.

REDIRECT EXAMINATION CONTINUED

BY MR. MORRIS:

Q Mr. Fried, did you appear before the Board of Estimate in connection with a hearing for the conversion of Site 30 from middle to low income housing?

A I did.

Q And in connection with that hearing before the Board of Estimate, would you tell us the nature of the discussion which occurred at that hearing with respect to that conversion?

MR. LAND: Your Honor, the phrase "nature of discussion".

THE COURT: Objection?

MR. LAND: Yes.

Q Will you tell us what occurred at the Board of Estimate hearing?

THE COURT: That is different. All right. Go on.

A There was testimony in opposition to the conversion by some representatives of the community which indicated that in their opinion the structures which were then in existence on the site were of sufficient sound condition structurally so that they could be rehabilitated and they urged the Board of Estimate that instead of allowing any new construction on Site 30 that they permit the then existing buildings to be rehabilitated.

Q Was there any further discussion with respect to the conversion?

A Not at such times while I was present in the Board of Estimate chamber.

Q Were you present through the entire hearing on that matter?

A No, I wasn't.

Q Do you know whether there was any discussion as to urban blight or questions of social and racial issues and various questions of that sort?

A No.

Q There were not?

A There were not.

MR. MORRIS: That is all.

THE COURT: Recross.

RECROSS-EXAMINATION

BY MR. LAND:

Q Mr. Fried, I direct your attention to pages 597 and 598 of the transcript of your testimony given on November 11, 1973.

Do you have that in front of you?

A Yes, sir.

Q I would like to quote from your testimony there.

MR. MORRIS: Which page?

MR. LAND: Page 597, the bottom, and the top four lines of 598.

Q You are speaking of the 3,000 low income units within the Urban Renewal area and you state and I quote:

"All of these figures are in excess of the number that was generally accepted by most people within the community as being a number sufficient to take care of the relocation needs of the area and we could not

jeopardize the continued improvement of the area."

Do you recall giving that testimony?

A Yes, sir.

Q In that testimony you refer to a figure which is accepted by most people within the community. Which people within the community did you speak to which gave you that information?

A That was information that was relayed to us at the meeting I mentioned in City Hall in yesterday's testimony at which Mr. Badillo, who was then the Commissioner of Relocation, Mayor Wagner, Mr. Felt, Deputy Mayor O'Keefe, Mr. Mollen and myself were present.

Q Is it your testimony that each and every one of those individuals told you personally that the 3,000 low income units would be sufficient to meet the needs of the relocatees?

A No.

Q They did not tell you that?

A Each person did not tell me that.

Q Which of those persons told you that?

A That position was expressed by Mr. Badillo and Mr. Mollen.

Q Mr. Badillo and Mr. Mollen told you that?

A They mentioned it at the meeting at which

I was present. They were telling it to the Mayor.

Q You heard them tell that to the Mayor?

A I did.

Q The other people that you mentioned, did they also tell that to the Mayor?

A No, they didn't.

Q So Mr. Badillo and Mr. Mollen are the only two people of which you have knowledge who told the Mayor that 3,000 low income units would be sufficient to take care of the needs of relocatees?

A It was their responsibility to determine that and to make a recommendation.

Q You heard them tell that to the Mayor?

A I did.

Q Where was this meeting held?

A In the Mayor's office.

Q How many people were there?

A I mentioned their names. You can count them.

Q 5, 50?

A About 5 or 6.

Q Do you know whether the minutes of that meeting were ever recorded?

A There were no minutes.

Q Did Mr. Badillo and Mr. Mollen tell the Mayor

that most people in the community believed that 3,000 low income units would be sufficient for relocatees?

A As I recall it, they stated that their communication with the community leadership led them to believe that this would be a sufficient number.

Q Then technically your testimony is somewhat inaccurate?

A I think it represents what took place.

Q But it is essentially hearsay from you that what you heard someone else say, when you heard Mr. Mollen and Mr. Badillo say what you testified as to what you believed to be what most people in the community believed?

A That's right.

Q But what it really means is you heard Mr. Badillo and Mr. Mollen tell the Mayor that in their opinion 3,000 low income units would be sufficient to meet the needs of the community?

A That's right.

Q It was 3,000, not 3,500?

A That's right.

Q And it wasn't 2,500?

A In making an estimation of that kind you cannot fix --

Q No, I said you heard them use the figures of 3,000 as opposed to 3,500 or 2,500, is that correct?

A The 3,000 figure is contained in --

Q Excuse me.

A Affidavit of Mr. McGregor.

MR. MORRIS: I object to counsel interrupting the answer. He is trying to answer the question and counsel interrupts him.

THE COURT: Mr. Land asked a simple question, Mr. Fried, and will you listen to it. Mr. Court Reporter, will you read it, please?

(Question read)

THE COURT: That takes a yes or no.

A No.

THE COURT: Next question.

Q You did not hear them use the figures 3,000?

A That's right.,

Q What figure did they use?

A 2,500.

Q They used 2,500?

A That's right.

Q Notwithstanding just a few minutes ago you testified they used a figure of 3,000?

A No. I said in Mr. McGregor's affidavit he mentioned the figure of 3,000 which would be filled.

THE COURT: For my edification, Mr. Fried, would you be good enough to explain what you mean by the figure 3,000, and 2,500 in the context of your testimony this morning?

THE WITNESS: Yes. At the time the discussion was held in the Mayor's office on what position the City should take when the project was being presented to the Board of Estimate, it was agreed that 2,500 would be a figure which would take care of the relocation needs and be acceptable to the business community, so that it would invest money.

Many years later, in an affidavit submitted in this litigation, the then Commissioner, Mr. McGregor, stated that there would be 3,000 created according to the plan as it existed now.

That's what I believe I testified to at the earlier time.

Q In your testimony yesterday, Mr. Fried, you related your belief that the tenant eviction procedures in low income units was inadequate because of the situation where a criminal low income tenant was removed from a housing unit, that he would often return to that housing unit without anyone's

knowledge, is that essentially your testimony?

A Not necessarily without anyone's knowledge. He would return.

Q He would return. Can you give me the names of any low income criminal who has, in fact, returned to a low income unit from which he was evicted?

A Yes, I would be glad to get it for you. I don't have it presently. He not only returned. He threw a housing caretaker off the roof.

Q Is that just one instance of that?

A That is one I recall immediately.

Q Do you have personal knowledge of that incident?

A Only through court records.

Q Only through court records.

A And police records.

Q You didn't see this man throw the caretaker off the roof?

A No. Our Police Department provides us with an incident report every day in the week, and in the incident reports by the police, our Police Department, it was indicated that a former tenant of a project in Brooklyn returned to the project and threw the caretaker off the roof, killing him.

Q And what did the Housing Authority do in respect to

this individual who threw the caretaker off the roof?

A He was arrested and turned over to the New York City Police for prosecution.

Q And what did you do in respect to the home in which he was living?

A The family had already removed.

Q Had already removed?

A Yes.

Q So then the problem was alleviated?

A What problem?

Q The problem of this individual returning to his apartment in a low income unit was alleviated because (a) he had been arrested for throwing the caretaker off the roof and, (b) his family had moved from the low income unit.

A If I may explain to you what our problem is, if the family remains in the project and the criminal has removed himself from the project, if he comes back and claims he is visiting his family, our police have no method of keeping him off the project grounds as a trespasser.

On the other hand, if the family is out and he should come back to the grounds, the police have a perfect right to order him off the grounds or arrest him as a trespasser.

Q And that is what the police can do to any individual

in any apartment building, a trespasser can be arrested?

A That's right.

Q Yesterday you testified that beginning in 1970 there were some changes in the West Side Urban Renewal Area which, in your opinion, caused the beginning of a deterioration.

What specifically, of your own knowledge, occurred in 1970 to form the basis of that opinion?

A It started a little before '70 and carried through '70. I think primarily it was the conversion of a lot of projects from cooperative to rental. Reports that I was receiving after I had gone to the Housing Authority was that the character of the tenancy in the public housing projects was changing, particularly that of the waiting list.

Q What was that last one, Mr. Fried? The character of the tenants was changing?

A The tenant occupancy of the public housing projects and, more importantly, the character of the waiting list for entry into those projects.

Q What do you mean by "character"?

A Primarily it would consist of an increase in the number of families with no male head of household or any employable member of the family.

Q Did you verify those records?

A We get them every day of the week.

Q Did you verify those records?

A Personally?

Q Yes.

A Of course not. I could never run a Government agency if you had to personally verify everything that came across your desk and you are landlord to half a million people.

Q You testified part of the reason for the deterioration was a change from co-op to rental.

A That was part.

Q Didn't you also testify that that change in itself is not a cause of a deterioration of a neighborhood but a change from co-op to rental is caused because of the tight money market, high interest rates and the tax advantages which Federal law gives to rental units and does not make available to co-op units?

A I believe I said that that was one of the motivations: I believe I testified the other motivation was a reluctance to invest any capital, one's own capital.

Q In a rental unit you would have, as I understand, conventional financing; is that correct?

A Not necessarily. There are Mitchell-Lama rentals. Most of them are there.

Q Let me take, for example, the three or four projects you spoke about yesterday immediately south of the West Side

which you referred to as being financed by conventional means; is that correct?

A That's right.

Q When you say "conventional means", you mean that private people, banks, insurance companies, partnerships, venture capital, they are the people who would provide the financing; is that correct?

A That's correct.

Q As opposed to a Governmental agency, State or Federal?

A Correct.

Q In other words, for a rental unit an investor with some sense of sophistication, a bank, an insurance company or investment partner of some type, people who hold themselves out as having some sense of financial sophistication, they were the ones putting their money into these rentals, weren't they?

A Yes, sir.

Q Let me ask you this, Mr. Fried. Is my understanding of the concept of co-op accurate when I state this: An individual who is desirous of purchasing half a dozen rooms in a building would be required to obtain financing from private sources for the cost of that portion of the building, he would have to go out personally and get a mortgage of some

sort?

A It would depend on the percentage of the mortgage. In some instances the City gave 100 percent mortgages.

Q But the individual himself would have to get the money or make a commitment on a loan, correct?

A To the extent that equity is required, yes.

Q Isn't equity required in most instances in co-ops?

A Not when there is a 100 percent mortgage.

Q With a mortgage, the co-op owner has to pay back that mortgage to the lenders; is that correct?

A Over a period of time.

Q So it is a loan to the co-op owner?

A To be technical, it is a loan to the corporation that owns the building and the individual occupant of an apartment buys stock in that corporation which entitles him to a proprietory lease for the apartment to which he subscribes.

Q But nevertheless, the repayment of that loan will come eventually from the pockets of the people who live in the building?

A Certainly.

Q Okay. What you are telling me, it sounds like, is that when a particular building has a choice of being co-op or rental, if the people who would live in there do not want to put themselves on the line for a long term financial

commitment but would rather pay a monthly rental and where the private investors, major banks, major insurance companies and private venture capital, have funds available, that economically that's the best way to do it, isn't that right?

A It depends on the location and marketability.

Q Mr. Fried, you hold yourself out as an expert on social tipping, do you not?

A Yes.

Q Would you tell us what articles or books or literature you have read relating to social tipping?

A I have read a large number of articles and periodicals which relate to it. I can't identify them at this point.

Q You can't identify even one article or book?

A Possible at a future date I can look them up. I will bring the books in. I have several of them home in my own library.

Q But you don't even know the titles of the books?

A Offhand, I don't.

Q Or the authors?

A Offhand, I don't.

Q When did you read these books?

A Over a period of years.

Q All right, Mr. Fried, I would like to have these

books you are referring to in court the next time you come.

A Glad to.

Q Have you ever written any books or articles about racial tipping?

A No.

Q Economic tipping?

A No, sir.

Q As to each of these alleged books which you read, do you adopt into the views expressed by the authors of each and everyone of these books?

A I will have to reflect on that for some time. I don't think I can answer that. They cover such a wide range of problems involving this and other countries. In all probability I disagree with something somebody said at some time.

Q In other words, as to these books -- you haven't written any books or articles yourself?

A I am not an author, sir.

Q But as to the books and articles which you relied upon written by other people, you formed your opinion by picking and choosing among those books that which you want to believe; is that correct?

A No, it is incorrect.

Q How did you do it?

A Because I based it on experiences I have had in administrating housing programs and urban renewal programs for a period of approximately 20 years involving not only this City but many other cities and states.

Q What bothers me, Mr. Fried, in your testimony yesterday you admitted that at the Policy Board meeting within the Housing Authority that you voted in favor of building Site 30 as a low income housing project notwithstanding the fact your vote was not necessary, and that you could have dissented and the Board's view for the low income housing project would have carried; is that correct?

A Is it correct that that bothers you? Is that the question?

Q Is that correct that is what you did, you voted for Site 30, the low income housing project, notwithstanding that you could have voted against it without changing the ultimate result of the vote?

A That's what happened.

Q Did you tell these men when you were voting in favor of the housing project as low income that you really were opposed to it? Did you tell them that?

A At the meeting?

Q Yes.

A No. I did prior thereto.

Q It sounds like, to me, you changed your mind.

A If that's what it sounds like to you, it sounds like it.

Q You consider yourself a responsible public official?

A Yes, sir.

Q And at that meeting in which you voted in favor of a low income housing project, you then entertained the belief as a responsible public official that that project should not go forth; is that correct?

A It was my opinion, I expressed it to my colleagues. If you will ask me the question, if you care to, why I did it, I will explain it to you.

Q And then not having voiced your objection at the meeting to building a low income housing project on Site 30, you were then the agency's representative at the Board of Estimate in favor of that housing project, weren't you?

A I presented it to the Board of Estimate as a proposal by the Housing Authority to construct public housing on Site 30, should the Board of Estimate decide that that's what they wanted done.

Q At that meeting, where you represented the Housing Authority, did you tell the Board of Estimate you were opposed to Site 30 as a low income housing project?

A I certainly did not.

Q Mr. Fried, these two occasions where you had your belief that Site 30 should not be a low income housing project, yet, at your public appearance you were in favor of it, these meetings took place prior to the time you executed your agency's statement in January, 1972, to be submitted to the Department of Housing and Urban Development in favor of Site 30 as a low income project; is that correct?

A Right.

Q And I believe I recall from your testimony that in that statement which you signed, you certified to be accurate of your own knowledge and belief and requested the consideration of social aspects in respect to the conversion of Site 30 to a low income housing project, that that report contained not one hint or iota there would be racial tipping or economic tipping, isn't that correct?

A That's correct.

Q Yet prior to that time you entertained this belief there would be racial and economic tipping?

A That's correct.

Q And then following the placing of your signature on that document which you certified was correct, you never told anybody at all, the Federal officials, the City officials, that what you signed, that you did not believe was true, did you?

A It made no difference. That was the official position of the Housing Authority of the City of New York and my two colleagues voted for it and believed it. What I did was I performed a ministerial act on behalf of the Housing Authority carrying out its decision and what I personally felt about it was immaterial at that point.

Q You hold yourself out as a responsible public official. Are you elected or appointed?

A Appointed.

MR. MORRIS: I object to counsel constantly referring to him holding himself out as a responsible public official. We know he does. He has stated repeatedly he does. It seems unnecessary for counsel to keep reiterating that in his cross examination.

THE COURT: We have no jury here. I will allow a rather broad permissive role to counsel on cross examination. I think you developed that point. It is very clear to me what you are endeavoring to bring to my attention.

Is there anything else on that?

MR. LAND: Your Honor, something bothers us, that a person would make his public expressions both in the agency he is dealing with before the Board of Estimate and then to HUD that he is in favor of Site 30 and he does that as a public official.

MR. MORRIS: Your Honor, the fact that Mr. Land is confounded by the mechanics of how things work in the world of Government and the administration of housing problems is not at all surprising, but I don't see where that becomes relevant to the trial of this case.

THE COURT: Well, Mr. Land is attempting to establish that this witness is unworthy of reliance by the Court. In other words, that I should disregard the quality of his testimony when I come to weigh it by reason of his lack, so says Mr. Land, of those ethical standards which Mr. Land contends would have compelled this witness to announce his position personally, I don't agree with Mr. Land. I think that someone had asked this witness what his position was on it or was the vote unanimous and he had answered falsely, that would be a different matter, but when he attended the meeting and he had been outvoted, it is the equivalent of three judges sitting together and I have done that for 21 years in the old court and many a time no matter how I felt I was outvoted. Men went to jail because I was outvoted and the 2 to 1 vote carried the day.

Mr. Fried tells us that he appeared before that official body, that Board, as a representative of the Authority. He did indicate that before he made the announcement to the Board of the Authority's position, he did express to someone his own personal opposition to that view. That was not developed and I cannot draw any conclusion on that score, but I see no sense in and I never have, Mr. Land, in not revealing what goes

through the judge's noggin. I may be wrong. You go ahead and straighten me out if I am, but I am giving you and, frankly, I express my reaction to ~~with~~ what you say, to what you contend.

If you find that this gentleman, a member of the Authority, did something that was reprehensible, I want to know about it and I will give you every effort to establish it.

MR. LAND: I am not suggesting that he did anything reprehensible, but his testimony here may not really be an accurate reflection of what his position always has been in the past.

THE COURT: I see. All right, sir.

Q Mr. Fried, in that statement that you signed on behalf of the Housing Authority, which you signed in January of '72 and submitted to the Housing and Urban Development agency, in there you stated that, as I recall the phrase, there was no known opposition to the conversion of Site 30 to low income housing, is that correct?

A I believe so.

Q And on your examination with respect to that document you admitted that you were in error in stating that because there was, in fact, opposition,

but that you simply were not aware of it, is that correct?

A That I was not aware that it was in the statement.

Q You were not aware that phrase was in the statement?

A I believe that was my testimony.

Q Were you aware at the time you signed this statement that there was opposition to the conversion of Site 30 to low income housing?

A Yes.

Q But you read the statement which contained that phrase, there was no known opposition?

A I believe I explained that I was told, let me see if I remember my testimony, I was told that the pertinent information was contained in a fact sheet, which was annexed to the top pages, tnat I lifted them up, looked at the fact sheet and then signed and that this statement appeared above it and I had never noticed it.

Q But that is a statement, the facing sheet is the one on which your signature appears?

A I think it is the second sheet.

Q Here is Government's Exhibit 1-E, which has

the front page, which you say you just glanced at and you turned to the second page.

A I did not say that.

Q What did you do?

A I asked the people who brought that to me for signature what it was all about. They told me, if I may, that all of the information is contained in the fact sheet.

I read the fact sheet, held the paper down, signed it and gave it back to them.

Q Let me ask you this, Mr. Fried: You see, I would say not more than two inches above your signature, unobscured by any other writing, is a very short sentence and I read it.

"There are no known groups in opposition to this development."

Do you see that now?

A I do.

Q And you are telling me that when you wrote your signature there, you did not see that sentence?

A I did not read it.

Q Mr. Fried, do you have any of your own personal checks with you today?

A Blank checks?

Q Yes.

A Sure.

Q If I would fill in a check --

THE COURT: He didn't ask you for them.

Q If I would fill in one of your blank checks payable to myself and write in a dollar amount and ask you to sign it, would you look at the dollar amount before you signed it?

A Yes, sir.

Q Why?

A Because this would be an unusual experience. As far as signing documents in my office, I may sign 200 or 300 times in a week.

Q This was not an unusual experience in your office, execution of this document?

A No, sir.

THE COURT: Referring to exhibit?

MR. LAND: E-1.

Q Government's Exhibit E-1.

A No, sir, we do it with respect to every project.

Q How many other documents, known as Government's Exhibit E-1, entitled "Draft Environmental Work Sheet" have you signed?

A None.

Q So it was an unusual experience, wasn't it?

A No, it isn't.

Q Before this document was presented to you, had you ever seen this form before, Government's Exhibit E-1, had you ever seen it before?

A No.

Q Let me understand your testimony, Mr. Fried. This document contains two facing sheets in which there are various blanks checked off and marked, numbered items. When a document, a form, which you had never before seen in your life, you didn't know what was contained on here, yet you blindly signed your name to it, is that what you are telling us?

A No, sir.

Q You did not blindly sign your name?

A No, sir.

Q You did read it then?

A I did not say that.

Q Did you read it?

A I did not.

Q You had no knowledge whatsoever of what was contained on the front page or on the second page above your signature, is that correct?

A No, sir, it is not correct.

Q You did have knowledge?

A I discussed with a member of the staff who had prepared it, whose responsibility it was to prepare it, what is this document because it was the first and only time I had one. Usually it is signed by the chairman. He was not available at the time.

They explained to me what was in it. I was satisfied with their explanation and I signed it. I do the same thing with countless numbers of leases, contracts.

Q Did they tell you that contained in this document was the phrase "There are known groups in opposition to this development"?

A No.

Q They didn't tell you that?

A No.

Q Mr. Fried, yesterday you were testifying as to statements made by the Mayor's office and apparently some other public agencies in or about 1962 which expressed the concensus as to the number of housing projects, low income housing projects, which would be built in the West Side Urban Renewal area, did you not?

A Yes.

Q I believe you testified that the Mayor himself formed an opinion as to the number of low income housing projects which should be built in the upper West Side Urban Renewal area.

A I presume you mean units?

Q Units.

A In and around?

Q In and around, all right.

Do you know whether or not the Mayor's statement or his view was ever reduced to writing?

A I believe he issued a statement.

Q Excuse me.

A I believe he did issue a statement. I think it was introduced in evidence, wasn't it?

MR. LAND: It was not. May I have this marked as Government's Exhibit H, please, for identification?

(Government's Exhibit H was marked for identification)

Q Mr. Fried, I show you Government's Exhibit H for identification and what we have done here is since the photocopy we got from the City's records is somewhat illegible, we have had it retyped on the annexed pages and I believe the retyping is accurate.

I would like you to read this statement and tell me whether in your opinion this is a statement issued by the Mayor's office in connection with your testimony yesterday as to the Mayor's view of the total number of units to be built -- total number of low income units to be built in the West Side Urban Renewal area?

MR. MORRIS: May we have the date of that document?

THE WITNESS: June 21, 1962.

(Pause)

A I have no personal knowledge, but it fairly represents the concensus that was arrived at in the Mayor's office.

MR. LAND: I offer this into evidence, your Honor.

THE COURT: Any objection by anybody?

MR. MORRIS: I have never seen the statement before.

THE COURT: All right, you may look at it. The witness has testified, Mr. Morris, that it fairly represents the concensus with respect to the matter that he has already testified about as the Mayor's statement.

THE WITNESS: May I correct a misapprehension,

your Honor?

THE COURT: Certainly.

THE WITNESS: That does not purport to be the Mayor's statement. It is a press release which includes portions within quotes.

THE COURT: Thank you.

MR. MORRIS: No objection, your Honor.

THE COURT: No objection. Mark it in evidence.

(Government's Exhibit H was received in evidence)

xxxx

Q In connection with the Mayor's statement --

THE COURT: H in evidence.

Q -- H in evidence, I would like to read a paragraph on page 2 thereof and I read:

"In addition to the 2,500 within the site area" I presume that means the 2,500 low income units, the preceding paragraphs make that clear -- "In addition to the 2,500 within the site area, the New York City Housing Authority has agreed to give priority to families relocated from the West Side Urban Renewal areas for apartments in the Douglass Houses extension at 100th Street and Amsterdam Avenue and in the new public housing project at 830 Amsterdam Avenue. It is estimated that thos will provide an additional 285 low rent apartments.

Additionally, low income units for which relocatees from the West Side will have priority will be available from turnover in other public housing projects on the West Side."

My reading of this paragraph, Mr. Fried, correct me if you think my reading is wrong, is that in addition to 2,500 units of low income housing within the Urban Renewal area, this shall be an additional number of low income housing units for the Douglass Houses extension and the new public housing project at 830 Amsterdam Avenue, is that correct?

A Is what correct?

Q My understanding of this paragraph.

A Your reading is correct.

Q So that in addition to the 2,500 units of low income housing within the West Side area, there will be an additional 285 low rent apartments in these two other locations, is that correct?

A No, sir.

Q That is not correct?

A No, sir.

Q It says here --

THE COURT: He doesn't quarrel with your reading. He quarrels with the facts therein, the alleged

facts, is that right, Mr. Fried?

THE WITNESS: That's correct, sir.

Q Let me see if I can make myself clear again, Mr. Fried. The paragraph first speaks of 2500 units of low income housing within the West Side Urban Renewal area.

A Yes.

Q It then speaks of an additional 285 low rent apartments referring to the Douglass extension houses and the 830 Amsterdam Avenue low income housing project, correct?

A Correct.

Q In other words, the totals referred to here would be the sum of 2500 plus 285 or a total of 2,785 units, is that correct?

A That is what that says.

Q That is what it says. During yesterday's testimony when you were reiterating the means by which you calculated 2500 units of low income housing units to be built within the area, did you not, in fact, include within that number the low income housing units at 830 Amsterdam Avenue?

A Yes, sir.

Q You did. And did you also not include the

housing units to be made at the Douglass Houses extension?

A I did.

Q In other words, your inclusion of the 285 units in fact the Mayor excluded, isn't that correct?

A No, sir, it is not correct.

Q The Mayor included these 285 units within the 2500?

A The press release is inaccurate in several instances.

Q You just told us before that this press release is a fair statement of the consensus adopted --

A Generally. You will notice, among other tings, it left out the site of public school at 93rd Street, which was included in the 2500. On several subsequent occasions the Mayor's representatives testified before the Board of Estimate that 2500 units was the number to be provided.

Q Mr. Fried, did you ever make any written memorandum of your belief that the Douglass Extension Houses and the 830 Amsterdam Avenue house was to be included within the 2500 units of low income housing?

A No, sir.

Q You never made any written memorandum of that?

A No, sir.

Q But nevertheless you say it was your belief to be included was the correct view adopted by the Mayor and his press release is wrong on that score?

A That's right.

Q That is what you have testified.

A I also testified that on several subsequent occasions his administrators appeared before the Board of Estimate and testified to 2500 as the units.

Q Have you ever had an occasion to see that press release before today's date?

A No, sir.

Q Mr. Fried, what is the City Planning Commission?

A It's an agency of the City government.

Q Would it have any functions in respect to commenting upon or approving the construction of low income units in the West Side Urban Renewal area?

A Technically, no, but as a matter of practice, yes.

Q Doesn't the City Planning Commission in fact adopt a thing called a plan and project?

A They do as a matter of practice. It is not required in the law for public housing. It is for middle income housing.

Q I believe the record will show that in fact during your testimony earlier, excuse me, last year, through you the plaintiffs put into evidence a number of plans and projects prepared by the City Planning Commission, is that correct?

A You say prepared by them?

Q Yes.

A Not prepared by them.

Q Approved by them.

A Approved by them.

Q Approved by them, all right.

MR. LAND: Could this be marked as Government's Exhibit I, please?

(Government's Exhibit I was marked for identification)

Q Mr. Fried, I have in my hand marked as Government's Exhibit I for identification a copy of a document entitled "Newsletter, Department of City Planning" dated July-August 1962. In this document there is some discussion about the West Side Urban Renewal area.

The first heading under the West Side Urban Renewal area states, one short sentence: "A minimum of 2500 units of low rent housing ..." and then goes on to explain what it means by that.

xxxxx

I show you this document and ask if you have ever seen that Newsletter before?

A I may have. I don't recall it specifically.

Q I would like to have you read the Newsletter and tell us whether based upon your discussions with City officials, whether that document represented the City Planning Commission's view in July - August 1962 based upon your recollection?

(Pause)

A It may have represented the opinion of the City Planning Commission.

Q You don't know?

A I don't know.

THE COURT: Would you read me that answer, Mr. Court Reporter, please?

(Record read)

THE COURT: Thank you.

MR. LAND: Your Honor, I offer this into evidence at this time notwithstanding that Mr. Fried will not verify whether or not it contains the views of the City Planning Commission. If an objection is interposed to its being offered at this time, we will, of course, be required then to call someone who was responsible for publishing this Newsletter and get the

original of the Newsletter and get it in that way.

THE COURT: Have you seen it before, Mr. Morris?

MR. MORRIS: No, sir.

THE COURT: Suppose you give Mr. Morris a chance to study it and I presume the defense counsel have seen it, but study it and then let's take it up.

All right, that is held in abeyance. Won't you go to something else now.

MR. LAND: Yes, your Honor.

THE COURT: By the way, Mr. Land, you may take whatever time you need, but give me an idea of how long you think you will take before you are through with recross?

MR. LAND: Yes, your Honor.

THE COURT: Give me an idea now.

MR. LAND: I think I am almost done, five or ten minutes.

THE COURT: I don't want to interrupt you so you go right ahead.

Q Mr. Fried, have you ever read a book published by the Rand Corporation called "Models in Segregation" by Mr. Schilling?

A No, sir.

MR. LAND: Your Honor, my recross would be completed at this time except for the production by Mr. Fried of the books in his home upon which he relied to obtain his expertise in tipping and perhaps the Court would ask Mr. Fried to produce those volumes for our inspection.

THE COURT: Of course. He already said he would and now in order to make it official, I direct you on the record to produce them. You have already said you would so the direction should come as no particular hardship.

THE WITNESS: Yes, sir.

MR. LAND: I would like to have those books and read them and to the extent that further cross would be required that I may do so.

THE COURT: It is an important piece of testimony, Mr. Fried, those books that you referred to. You should be in a position to tell us in a general way certainly what impressed you about their presentation and what your own experience caused you to disregard or not give full weight to.

THE WITNESS: I will refresh my recollection and I will submit them directly to Mr. Land, as I presume you wish.

THE COURT: Fine. All he asks is that you bring them into court. You have to come back anyway to give testimony with regard to the new schedules, isn't that so?

Gentlemen, isn't that so?

MR. MORRIS: Yes.

THE COURT: He has to return in order to testify with regard to the new schedules. Remember how much time we spent yesterday on the old schedule marked in evidence as --

MR. MORRIS: Exhibit G.

THE COURT: Exhibit G and you are contending, the plaintiff contends that that is completely beside the point in the light of what will be revealed in the new schedules so we have got to listen.

Very well, we will take a short recess.

(Recess)

THE COURT: Any further recross?

MR. LAND: We have the matter of Government's Exhibit I. The City Planning Commission's press release.

THE COURT: I know we have, but I did not know whether Mr. Morris was prepared to give us his position.

Are you?

MR. MORRIS: I am not as yet, your Honor.

THE COURT: Is there any further recross?

MR. DOUW: I have a few questions, your Honor.

RECROSS EXAMINATION

BY MR. DOUW:

Q Mr. Fried, I would like to return again to your testimony about the meeting in the spring of 1962 with you and Mayor Wagner and Mr. O'Keefe, Mr. Mullen, Mr. Badillo and Mr. Felt. Those were the participants, were they not?

A Yes.

Q Did you testify yesterday on your redirect examination that Defendant's Exhibit D, which is the statement of Mr. Badillo made before the Board of Estimate on June 22, 1962, is the only document you had available to refresh your memory about the meeting you testified to? I have an extra copy.

A May I see it?

(Document handed to witness.)

A (Continuing) I believe this was presented by Mr.

Badillo as Commissioner of Relocation or Deputy Commissioner of Relocation as part of the record.

Q Yes, but did you testify yesterday that Exhibit D was the only document you had available to you to refresh your memory about the meeting that you testified to? That is my question.

A I never referred to that to refresh my recollection.

Q Did you have any other memorandum or any other document to refresh your memory about the meeting?

A No, sir.

Q You relied solely on memory?

A Yes.

Q Can you recall approximately how long the meeting lasted?

A No, sir.

Q Was it a short meeting, five minutes, if you can remember?

A I don't remember. I have attended many meetings --

THE COURT: I do not remember is his answer. Next question.

Q I believe you testified that it was Mr. Badillo who expressed the conviction that at least 2,500 public housing units would be necessary to develop in connection with the urban renewal area; is that correct?

A I did not so testify.

Q What did you testify?

A I testified that it was the consensus of the group from everything that was said by everybody present that this would be so. As I recall it, Mr. Badillo's position was more would be required.

Q I am sorry. I didn't hear your last statement.

A I believe, if my recollection is correct, that Mr. Badillo claimed that more than 2,500 would be required.

Q And what was Mr. Felt's opinion expressed at that meeting, if you remember?

A That it should not be more than 2,500.

Q Did the Urban Renewal Plan at that time call for a number of low income units which was less than 2,500?

A I believe the final plan which is contained in Plaintiff's Exhibit 8 dated May 29, 1962, which was approved by the City Planning Commission, called for 1,630 units.

Q And what was the date of the approval of the City Planning Commission?

A May 29, 1962.

Q May 29th?

A That's right.

Q Was the meeting you testified to held after that decision of the City Planning Commission?

that meeting?

A Only to the extent, as I recall it, that Mr. Badillo was of the opinion that more low income units would be required. I don't think anybody mentioned or studied the relocation plans.

Q When Mr. Badillo made that comment, was he saying that more low income units would be required in order to effectuate the relocation plan?

A The needs of the relocation plan as he saw it at that time.

Q And the relocation plan was part and parcel of the Urban Renewal Plan; is that correct?

A Yes.

Q They went together?

A Yes.

Q Mr. Fried, I refer to Page 585 of your testimony on October 11, 1973. I would like to quote lines 5 through 22 on that page.

"One of the things that was promoting and advancing the West Side Urban Renewal Area was the fact that private people were buying brownstones that the City of New York had acquired and were rehabilitating them. That added to the representation of the West Side Urban Renewal Area."

Pardon me. That last sentence should be:

"That added to the representation of the West Side renewal. Stories about this appeared in the media. Prominent people lived in them.

"I had been advised on inquiry at HDA that the City hadn't sold a brownstone in over a year."

Is that a correct quotation?

A Yes.

Q Are you saying in that statement that your knowledge of the purchase of brownstones in the urban renewal area is based on an inquiry to HDA?

A My knowledge of whether the City was selling any of the buildings that they had acquired was based on that.

Q An inquiry that you made to HDA?

A That's correct.

Q Did the City take title to all brownstones when the urban renewal area or plan went into effect?

A No, sir.

Q It did not?

A No, sir.

Q Can you tell us what brownstones the City did take title to? My question should be what kinds of brownstones did the City take title to and which did they not when the Urban Renewal Plan was first instituted?

A I believe the City took title to those which were in

a deteriorated or deteriorating condition and many of those, I am not sure whether all, which had been converted to single room occupancy.

Q In other words, those brownstones that required rehabilitation were taken by the City?

A That's right.

Q And the taking of title by the City is the first stage of the execution of an Urban Renewal Plan; is that correct?

A Yes.

Q Mr. Fried, are you familiar with a company known as the West 95th Street Block Association Development Company?

A No, sir.

Q Are you aware that on that street, West 95th Street, that company that I just mentioned last year bought and are now renovating ten City-owned brownstones?

THE COURT: You are citing facts in your question that has no basis at all. He said he was not familiar with that organization at all. Therefore, the question is stricken.

Next question.

MR. DOUW: I have no further questions, your Honor.

THE COURT: Any further recross by anybody?

MR. GOLD: I do, your Honor.

RECROSS EXAMINATION

BY MR. GOLD:

Q Mr. Fried, you have attended many Board of Estimate meetings, haven't you, over your period with the Government?

A I have.

Q You are familiar with the procedure at the Board of Estimate, are you not?

A Yes.

Q Would you say that those meetings, and particularly the hearings that are held in connection with Housing Authority plans and projects, are informational in nature?

A The public hearings?

Q Yes.

A Sometimes they are controversial.

Q Controversial. They are not adversary proceedings, in your opinion, are they?

A Pardon?

Q They are not adversary proceedings?

A Very offten there are speeches in opposition.

Q That is correct. But there is no cross examination, is there?

A No, not by the authorities. There may be by the members of the Board of Estimate.

Q I see. Many people come, some speak in favor of a

particular matter?

A Yes.

Q And some speak against?

A Yes.

Q No difference than the hearing that was held in connection with the Site 30 plan or project; is that correct?

A Yes.

Q And you would say if you were to line up the various people for and against Site 30 plan or project, would you put yourself on the Board side or against it?

A Personally?

Q Yes, that day.

A I was for it. May I clarify that, sir?

Q Surely.

A The position that was taken by the Housing Authority, with me as its representative, was that it was up to the Housing and Development Administration, which was administering the Urban Renewal Plan, to make a representation to the Board of Estimate of what the use should be. There were two things on the agenda that day. Should the Urban Renewal Plan be changed so that Site 30 should be designated for a low income rather than a middle income which it then called for. That the Housing Authority did not participate in. That was handled by the Housing and Development Administration.

The only thing that the Housing Authority appeared before the Board of Estimate for was to present a plan and project to carry out Site 30 as a low income project should the Board of Estimate decide the Housing and Development Administration request affirmatively.

Q And you were there to say in behalf of the Authority that day that if the Board decides this site should be public housing, the Housing Authority is ready, willing and able to go ahead in accordance with this plan?

A That's right.

Q In connection with Mr. McGregor's affidavit to which you have alluded at various times in your testimony, particularly the statement that he made there that ultimately about 3,000 units would be included, there was no question in your mind when you read that -- I refer you particularly to the page. It is page 15, paragraph 9.

MR. MORRIS: Page 15?

MR. GOLD: Page 15 of Mr. McGregor's affidavit.

Q Do you have that in front of you?

A No, I don't. Is that an exhibit?

Q It may be deemed to have been a Court's Exhibit because the judge told us yesterday, I believe, that all the affidavits that were submitted on the motion have now been deemed to be exhibits.

THE COURT: Yes, but he means is it a marked exhibit.

MR. GOLD: No.

THE COURT: Please show him the affidavit and have him see what you are talking about.

Would you give us the date of the affidavit, please, Mr. Gold?

MR. GOLD: Yes, sir. The affidavit is made by David McGregor, Deputy Administrator and Commissioner of Development of Housing and Development Administration, verified on September 11, 1973.

Q I refer you to Page 15, paragraph 9.

THE COURT: And what is your question?

Q Is it stated in there, sir, that the 3,000 number is a number with the word "by" in front of it?

A Yes, sir.

Q Would you consider that to mean approximately 3,000 units?

A Yes, sir.

Q In addition, in that paragraph is there a statement that that 3,000 or about 3,000 units is part of an overall total of 14,500 units expected to be built in the area?

A No, sir.

Q It does not say that?

A It says to be contained in the entire area.

Q Contained.

When Mr. McGregor said to be contained, what is your understanding? First, do you agree with the approximate 14,500 number?

A No, I have never made a study of how many units there are within the West Side Urban Renewal.

Q So you are not aware of how many units, both those that are being redeveloped and those that will remain, will be within the area?

A That's right.

Q Do you know, for example, how many units were planned to be redeveloped, just redeveloped units?

A I believe that figure is contained in Government's Exhibit G.

Q Do you know the number?

THE COURT: Give us the page of it, Mr. Fried, and what it says.

THE WITNESS: On Page 1, the summary sheet, the total units, projects completed --

THE COURT: By the way, that is not Page 1.

THE WITNESS: I changed it to the summary sheet. Project completed 4,720, projects under construction 457, projects in planning 2,104 and if we add those up we'll get the figure.

Q You are talking about units now?

A Yes, sir.

THE COURT: Have you got a pad there, Mr. Fried?

THE WITNESS: I am adding it right on my copy, sir.

THE COURT: All right.

THE WITNESS: If my mathematics are correct it is 7,281 units.

Q So somewhere in the neighborhood of 7200, 7300 units, the number 7800 has been thrown around, that would be correct in your estimation based on Government's Exhibit G, is that correct?

A That's correct.

Q Prior to seeing Government's Exhibit G, were you aware of how many redevelopment units --

A At one time I was, yes.

Q Now, sir, in addition to redevelopment units there are units to be rehabilitated and there are also what is known as conservation units, is that correct?

A That's correct.

Q Would you include in your estimate of total units in the 20 square block Urban Renewal area both the redevelopment units, the rehabilitation units and

the conservation units?

A That is the number of units that exist within the area.

THE COURT: The answer is yes then?

THE WITNESS: Yes.

Q So in your evaluation of whether or not a particular action by the City of New York might tip the area, you would have to weigh the number of low income units against the total number in the Urban Renewal area, isn't that correct?

A In the area and surrounding it.

Q In the area and surrounding it. And prior to seeing Government's Exhibit G, you were not really cognizant of the numbers, total numbers in the area?

A As an exact figure, no, but I am very familiar with the area.

THE COURT: As an approximate figure, were you familiar before you saw G in evidence?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Yesterday in your testimony, as is indicated in the very fresh transcript that we have here, page 823, you testified on redirect in answer to the question which I will read by Mr. Morris;

"Did you advise purchasers and developers and tenants that the plan would be performed in accordance with the provisions of the Urban Renewal Plan as approved by those agencies and by the Board of Estimate and the City Planning Commission?"

And your answer was, "As they then existed."

And you followed up "Yes, as they then existed."

Now, sir, in addition to advising purchasers and developers and tenants that the plan would be performed the way it was at the time, did you also on those occasions advise these people that Urban Renewal plans are subject to change and modification?

A No, sir.

Q You did not. Would it be correct to say that Urban Renewal plans are subject to change and modification?

A I don't think I have ever seen one carried out as originally planned.

Q In the entire City of New York, is that correct?

A Further than the City of New York.

Q So that there is nothing concrete about a particular provision of an Urban Renewal plan at a given time; that can always be changed, it is always

subject to change, is that not correct?

A It is a representation by the City of New York and the federal government that this is what is intended to be done within an Urban Renewal area.

Q As of the date of that particular representation?

A That's right.

Q The Urban Renewal plans always contain provisions, do they not, that they are subject to modification?

A Under certain circumstances.

Q What are those circumstances?

A Now, I cannot tell you the exact date when it was changed, but originally when I was the administrator of the Housing Home Finance Agency, all Urban Renewal plans and contracts contained a provision to the effect that you could not change the reuse of any parcel of land unless you secured the consent of the two adjacent owners.

Now, that carried through and the last time I was familiar with an issue that raised that subject was in connection with a change of the plan of Lincoln Center. I have been advised, but I have no personal knowledge, that subsequent thereto the policy

changed and that is no longer required.

However, before you can change a plan you must have the approval of the City Planning Commission, the Board of Estimate and the federal government.

Q Without question, subject to those approvals, the plans could be changed?

A Yes, sir.

Q So guarantee that in 1962 the West Side Urban Renewal area would necessarily be finished in the manner provided in the 1962 Urban Renewal plan, is that correct?

A That's correct.

Q And, as a matter of fact, there were a number of amendments and changes in this very West Side plan, is that correct?

A That's correct.

Q So that it would have been appropriate, would it not, Mr. Fried, as you were giving advice to the various people who might be developing or purchasing to advise them of the fact, yes, we have a plan today, but perhaps it will be changed, it may be changed, needs different programs and so on?

A It was never done by the City.

Q And it was never done by you personally?

A No, sir.

THE COURT: Permit me to interrupt you. Mr. Fried, in the light of your experience, will you explain to me bearing in mind the testimony you have just given how any venturesome financial enterprice could rely on a plan which is subject to change without notice and almost from day to day, as you put it to me. I don't quite understand it.

Will you explain it to me from a practical point of view?

THE WITNESS: I will, your Honor. Up to a certain point in time when the Board of Estimate adopted a resolution approving a project, reasonably people could assume that this would be carried out and until comparatively recently it was always thus.

Within the last two or three years the Board of Estimate has done in my opinion, and I so testified to them, some inexplicable things which in my opinion would destroy the confidence of the investing community that the Board of Estimate will continue to adhere to its position.

If I may give two examples. A plan and project for public housing in the Lindenwood area of Brooklyn was approved. In the report of the City

Planning Commission it was stated that in order to carry out this project a street would have to be closed and the zoning of a portion would have to be changed.

This was then presented to the Board of Estimate and the Board of Estimate adopted that resolution and approved the plan and project.

After the land had been acquired by the City Housing Authority at a cost of in excess of $1 million, which was guaranteed by the federal government, and the architects had finished the working drawings, we went back to the Board of Estimate for them to take the necessary ministerial action for closing the street and of upping the zoning.

By that time community opposition had risen and the Board of Estimate decided they would not close the street and they would not change the zoning and when I appeared to them, the fact that once things like this get known, I mean in this instance the Housing Authority is on the hook for $1.2 million with absolutely no way of repaying it if we cannot sell the land and get our money back. We certainly cannot get our money back for the hundreds of thousands in designing the project and I was advised by the Board of Estimate

and in the person of the present Mayor, we have a right to do it if we want to, we can make good damages if you ultimately sustain it.

THE COURT: All right.

MR. GOLD: Your Honor, might I just state for the record that I am familiar with the Lindenwood problem that Mr. Fried has just described to the Court and it followed that the entire problem of the Forest Hills project and in my opinion, and I state this for the record, it is really not relevant to the changes that I am alluding to in an Urban Renewal plan which covers 20 square blocks.

THE COURT: You will have to explain that to me. He endeavored and did satisfy me to some extent with regard to what was puzzling me.

If you want to add on to it, I will be glad to take edification from anybody. I always have even from a child.

MR. GOLD: Your Honor, I think it requires an explanation. The Lindenwood plan and project, which is similar to the plan and project we are talking about in connection with Site30 was approved by both the City Planning Commission and the Board of Estimate well back, I think, 1966, perhaps 1967. There were, as

Mr. Fried said, some little tails hanging, the closing of streets and so on.

Following the litigation and the upset in Forest Hills, as a result of that low income housing project, there was a political environment about the Board of Estimate which was such that they found a very simple way of killing Lindenwood, which is another large low income housing project in the Howard Beach, Queens section of Queens. Similar in many ways to Forest Hills and so the Board of Estimate found a very convenient, probably irrational way of saying, we will kill this low income housing project because it looks lousy and we have just had that fuss over Forest Hills.

That is essentially, I think --

A They also killed a middle income project in Brooklyn.

THE COURT: All right, gentlemen, thank you. Won't you please continue.

MR. GOLD: Yes, sir.

Q Mr. Fried, we talked yesterday a little bit about the procedures of the Housing Authority in terms of removing tenants who might be non-desirable and there are particular areas or criteria that the Housing Authority has set up, has it not, in connection with

these removals?

A Yes, sir.

Q Do you know what those are?

A Yes, sir.

Q Can you tell the Court?

A Yes, sir. Number one would be a breach of the rules and regulations, which are printed and presented to the tenants at the time they accept their lease.

Q The tenant signs those rules and regulations?

A No, they don't sign. It is presented to them at the time they sign the lease.

The principal category of case that falls in those breaches of regulations is the possession of a dog. Controversial, but that is so.

Then any activity on the part of a member of the family which constitutes a threat to the health, safety and welfare of the remaining tenants is grounds for termination of tenancy.

Q That is it?

A Yes, sir.

Q Supposing the people -- is there a ground or criteria, for example, if one of the members of the family have a particular apartment is convicted of a statutory rape?

A We haven't had such a case.

Q Is that a criteria, though, is tnat a possible criteria to start a proceeding to remove that tenant?

A I would have to consult with my colleagues whether that falls within it.

Q What about using the apartment for the sale of narcotics; is that a ground for starting procedure?

A Yes, sir.

Q How about addiction to narcotics?

MR. MORRIS: Pardon me. Your Honor, aren't we pretty far afield in this cross-examination?

THE COURT: We are, but I would rather have counsel be given full play and let them get off their chest whatever they thing they ought to call to my attention than start to restrict them. The moment I begin to feel I am being taken advantage of, I will speak out.

Go on, Mr. Gold.

A There are a variety of actions we take with respect to addiction cases. Take the case of addiction where they are enrolled in a program for the elimination of the addition.

THE COURT: Then what happens?

I have been around, too. On that stuff I

know something. Tell me quickly what it is that you wish to say, sum it up.

THE WITNESS: If there is possession in an amount sufficient to raise a doubt that perhaps it is there for the purpose of sale, we will start an action.

THE COURT: All right.

THE WITNESS: Otherwise we do not.

THE COURT: All right.

Q What I am really getting at is you have a whole series of procedures and criteria and manuals and booklets and all kinds of personnel working in this very area, including legal staff, is that not correct?

A Yes, sir.

Q So there are procedures to keep the tenancies as stable as you can keep them?

A Yes, sir.

Q One more thing, Mr. Fried, You have alluded throughout your testimony about numbers of welfare tenants in various buildings on the West Side.

Do you know what those numbers are?

A No, sir.

Q Not at all?

A No, sir.

Q And you say you know there are welfare tenants,

but you don't know the numbers?

A I get my information and base my opinion on newspaper articles, television programs I have seen with respect to the particular issue and reports I get from our statistical unit as to the number 00 as to the rentals that are being paid and authorized by welfare within the area generally because we need that information in order to apply to the federal government for approval to rent in non-public housing units at a certain price.

Q That is with respect to the units over which the Housing Authority has jurisdiction?

A No, we ask what welfare is willing to pay and is in fact paying in different parts of the city in other than public housing.

Q But you don't know the numbers?

A No, sir.

Q And yet one of the criteria, if I recall correctly, in your testimony which said that the area would tip or your evaluation of the area was that there were welfare tenants in various buildings?

A Yes, I would have to be extremely naive, living in the general vicinity and walking the streets not to amek certain observations which lead to this

conclusion.

Q I am sorry you said that, Mr. Fried.

THE COURT: No, if that is sworn testimony, that is it, but I want to say this to you, sir: Mr. Gold wants to know and you said yes, as I understand it, to the question as to whether or not that was a significant factor in order to arrive at an answer to the all-embracive question of tipping.

In other words, is that a consideration and I take it it is?

THE WITNESS: Yes, sir.

THE COURT: If you haven't got any figures, then it is useless on that score because the number that you refer to might be a half dozen, a handful? On the other hand, actually there may be thousands, isn't that so?

THE WITNESS: That is so, your Honor.

THE COURT: So it is meaningless to me.

THE WITNESS: When I say on personal observation, if I were looking for a place to live and I went into a neighborhood and during the course of the day I saw large numbers of unemployed young males hanging out in front of apartment houses and hotels, drinking in some instances from bottles concealed in paper

bags, in very many instances obviously under the influence of drugs, I would not rent an apartment there.

THE COURT: I understand you perfectly. Still that is not an answer to what I think is essential and, gentlemen, I don't mind saying that I am not going to operate in if, ands and possibilities. You will have to give me concrete, tangible evidence that is significant in the eyes of the law of the demand or the imperative for proof on an issue loke that, such as the percentage over a period of time of people on welfare, that is an essential point and I am not going to guess at it.

MR. GOLD: Thank you for your assistance, your Honor. I have nothing further.

THE COURT: I don't know about assistance. I am calling them as I see them.

MR. GOLD: That is all.

THE COURT: Any other recross by anybody?

MR. MC LOUGHLIN: No, your Honor.

THE COURT: Mr. Morris, have you further re-redirect?

MR. MORRIS: Yes, just a few.

FURTHER REDIRECT EXAMINATION

BY MR. MORRIS:

Q You testified on recross about the change in the area after 1970. Wasn't that due in part to squatters and welfare tenants as well as the other factors?

MR. LAND: Object to the leading question, your Honor. He is putting the answer right into his mouth.

MR. MORRIS: That was asked on cross-examination and I am repeating the question, your Honor.

THE COURT: Objection overruled. What is your answer?

A Yes.

Q Now, you testified on cross-examination that with respect to Site 30 and the meeting and you started to say, but counsel did not allow you to tell why you did what you did in voting for Site 30.

Would you tell the Court why you did what you did in voting for Site 30 in view of your feelings to the contrary?

MR. GOLD: Excuse me, your Honor. May we just know where this vote was, which vote we are talking about?

A I was just about to ask that question.

THE COURT: Yes.

Q You testified on cross-examination that you voted at the Board of Estimate in favor of the project even though you personally were not in favor of it?

A No, sir.

Q And you then testified that you would like to explain why you voted as you did at the Board of Estimate with respect to Site 30.

A No, it was not at the Board of Estimate. It was at a duly convened meeting of the Housing Authority.

Q Yes, that's right. Would you tell us what occurred?

A Of the plan and project which was subsequently submitted to the Board of Estimate.

Q Would you tell us what your position was there?

A Yes. I had very frequently before a meeting, if there is a controversial issue, the three members met in private and discuss their positions with respect thereto. At that meeting I expressed my opinion. I was told that it was the position of the administration of the City to convert that site and that we should be

prepared to develop the site. The federal government had said it would have money for it. My two colleagues indicated they would vote for it.

In situations suc as that, where I cannot hope to reverse the vote and I have exercised whatever ability I had in advancing my argument as to why a position should be taken, when the formal vote is taken at the open board meeting, I go along with my two members so that the staff, which is present at the meeting, should have the impression that we are united once a decision is arrived at.

Q Now, in connection with the conclusions arrived at by the members of the Boards with respect to that question, were political factors considerations which might have influenced the decision of the various members?

A I would presume so.

Q Now, when you prepared the report for the federal government with respect to the one -- Exhibit E-1, I think it was, that Mr. Land showed you that you had signed, you testified that your staff had indicated to you that was the way the matter had been requested by HUD.

Now, is that correct, were you informed by

your staff about that?

A Well, in the beginning of your question you referred to the paper I prepared. I did not prepare it.

Q Right.

A It was prepared in the normal course of business by the staff that was established for that purpose.

Q And did the staff cooperate with HUD, the federal agency, in connection with the preparation of that?

A Yes.

Q Now, were there, in fact, groups in opposition to the conversion of Site 30 to public housing at the time that this occurred?

A Yes.

Q So that it was a controversial project, is that right?

A That's right.

MR. LANDS: I object to the characterization "controversial".

THE COURT: He is an expert. I have been listening to testimony now from this witness for a considerable period of time and there does come a juncture

as the architects?



when you have a right to pretty much give leading questions based on the testimony elicited up to the time such leading questions are propounded.

I overrule your objection. Would you be good enough, Mr. Court Reporter, to let us have the pending question.

(Question read)

THE COURT: Next question.

Q Was there a planned change for Site 30 and 4, an Urban Renewal plan change submitted and approved by the Board of Estimate in the conversion of those sites from middle income to low income housing?

A I don't know because at one point there was -- I was told by HDA that there was an issue raised, presented to the Corporation Counsel's office, as to whether it was necessary to go back to the Board of Estimate to make the change. I don't know what the ultimate decision was.

At the time I appeared before the Board of Estimate in support of the plan and project for Site 30, there was an item on the calendar to change the plan for Site 30. When requested to speak with respect to that by the Board of Estimate, I refused and I suggested that they send for somebody from the Housing

and Development Administration, which they said they would do, and I left. So I have no personal knowledge whetner the plan was ultimately change formally.

MR. MORRIS: That is all.

THE COURT: Any further questions before I excuse this witness? Any questions dealing with what was developed today or up to this point?

MR. LAND: I have two questions.

THE COURT: Surely, Mr. Land.

MR. LAND: Dealing solely with Mr. Morris' redirect.

THE COURT: Certainly.

FURTHER RECROSS EXAMINATION

BY MR. LAND:

Q Mr. Fried, I presume the Housing Authority board votes upon many, many, many matters, does it not?

A Yes, sir.

Q Is the vote by the board always unanimous?

A With the exception of a very rare instance when for one reason or another a member wishes not to be recorded, he would abstain or in some instances for political reason would wish to have a vote recorded in opposition to the other two. It is very rare.

Q Before such an occasion would occur, would

there be discussion by the dissenter as to his response for not wanting to participate with the view of the other board members?

A Yes, sir.

Q That would take place at the board meeting?

A No, sir.

Q Prior to the board meeting?

A Yes, sir.

Q The board meeting is public?

A We have members of the staff. It is not open to the public.

Q Let me understand this: Prior to the convening of a board meeting, members of the board who have conflicting views discuss that view among themselves?

A In executive session.

Q In executive session?

A Very similar to what the Board of Estimate of the City of New York does.

Q Then there is a call of the meeting of the board to vote upon a particular resolution?

A We had mornings at 9:00 o'clock regularly.

Q At that meeting no one discusses anything?

A That is not true.

Q You just simply vote?

A That is not true.

Q You do discuss?

A That is true.

Q A person holding a dissenting view would make known his position at that time?

A No, sir.

Q What is the purpose of the discussion?

A At the meetings a variety of items are submitted. Every contract in excess of a certain amoung must be voted upon by the board and authorized. Very, very often -- let me withdraw that.

The day before the meeting on Tuesday, sometimes late Monday afternoon, we get a copy of the agenda and a big folder which contains memoranda and material prepared by staff with respect to the various items on the agenda.

We may have individual questions with respect thereto. For instance, you will have a painting contract. You will have several painting contracts. You will notice that in one of them the price increase over last year is far in excess of others.

We have staff present and it may be me or one of the other members will say, will you please

explain how come in this project the prices are so far in excess of the others.

If they have a valid explanation, and we vote affirmatively. There are very few instances when a controversial issue comes up before the board for vote. It is mostly routine things that are required by law or our regulations.

Q On controversial things you may have discussion?

A When we get termination of tenancy proceedings, we get a report from a hearing officer. It may not be entirely clear. We may have, if I may use the term, a gut reaction something doesn't lie right. We will then ask our Department of Social Services to please make an investigation. Maybe the particular tenant has insufficient knowledge of the English language and didn't understand what was happening. It is things of this nature that are discussed at a meeting.

Q In other words, the heavy things, the more important things, controversial things which do lead to discussion?

A I don't know how you define "heavy".

Q Controversial?

A Yes, sir. There may be a doubt in somebody's mind about something whether we should, as a policy, continue to buy certain items where the costs have gone up 56 percent within the last month.

Q Mr. Fried, could you tell me the names of the members of your staff who prepared Government's Exhibit E1 and the members of your staff you alluded to in your testimony?

A I cannot. I can give you the chief of the unit. His name is Edward Lee. He is director of program planning.

Q Is he the only member of your staff to whom you spoke in connection with Government's Exhibit E1?

A No, I spoke also to Mr. Eric Nadel.

Q Anyone else?

A He is the assistant to the general manager.

Q Anyone else?

A No, sir.

Q Do you know whether, in fact, these two individuals, prior to the time you executed your signature on Government's E1, had discussions with the Department of Housing and Urban Development in respect to the conversion of Site 30 low income housing?

A They so represented to me.

Q Prior to the time you signed?

A Yes, sir.

Q Could you tell us the circumstances under which they represented that to you?

A Yes. They called my secretary and asked whether I was available to sign a document. The answer was yes. They came in. I asked them questions with respect to it. I signed the document and they took it out.

Q What questions did you ask them?

A Whether the form was in accordance with the instructions they had received from HUD, because they advised me that HUD had not yet published any regulations.

Q They told you HUD had not published regulations with

respect to that document?

A That's right, with respect to filling out these forms and how they would be handled by HUD.

Q You don't know of your own knowledge that the form itself was published in the Federal Register prior to the time you executed the document, do you?

A No.

Q What else did they tell you about the document?

A That was all.

Q In other words, they came in and told you the Government had not published regulations on it, please sign it?

A No. In essence that was the result of the discussion.

Q What did you say to them?

A Then they came in I said, "What is it you want me to sign?"

They said, "As you know there are new forms required by HUD. Unfortunately, we have been advised by HUD that the regulations have not yet been promulgated. So we went to them and asked them how do we fill it out. They gave us instructions and said essentially the way you fill out an application normally for a plan in project. We did that, put most of the information in the fact sheet."

I thumbed through the fact sheet, signed the document and they took it out.

Q When you say they went to HUD to find out how to fill it out, then you go to HUD to find out the facts, to find out what categories had to be answered; is that correct?

A Not necessarily.

Q What was it, then?

A They went over to find out what it is HUD wanted us to include in the documentation.

Q And what they wanted you to include in the documentation, then, are the various questions posed on the first two pages of Government's E1, correct?

A They wanted what was contained in the fact sheets, I was told.

Q Let me ask you this. The form was blank to begin with, was it not?

A Originally, yes.

Q I understand from your testimony presumably these two gentlemen went over to an official at HUD and said, "We have this form we don't know how to fill out"? Would that be about how you anticipate the conversation went?

A Yes.

Q HUD said, "You have a number of questions to answer. We ask you to answer them to the best of your ability

setting forth all the relevant facts which may appear necessary to completely answer that form"; would that be the possible response you would anticipate HUD would give?

A Yes.

Q And to the best of your knowledge, your two assistants performed that act?

A They did.

Q They gathered the facts necessary to fill in the form?

A That's right.

Q Once that was done they presented the form to you for signature?

A No, sir.

Q They did not?

A No, sir.

Q What did they do?

A Customarily after an uncertain form of this nature is filled in, they go back to HUD, which is approximately two blocks away, and they say, "Will this be satisfactory?"

When HUD says yes, we then execute it formally and they present it back. That is done in very many instances by the Housing and Urban Development.

Q What do you mean "satisfactorily"?

A That they would accept it.

Q Accept it for what purpose?

A To process.

Q They would not necessarily rule favorably on the application, but the form is filled out so at least it gets off the ground?

A Yes.

Q It is like in law stating a cause of action, whether you are going to get the money is another question?

A In some cases they go so far as to say, "This is what we need. You will get your approval in two weeks."

Q Do you know whether they did that on this occasion?

A No.

Q Do you know that they did not do it on this occasion?

A No, sir.

Q What did Mr. Lee or Mr. Nadel tell you that HUD told them on this occasion?

A That this would be satisfactory.

Q But for what purpose you don't know?

A No.

Q Do you have any knowledge as to the processing of the application for the conversion of Site 30 within the Housing and Urban Development Agency?

A You mean the Housing Development Administration?

A In the Department of Housing and Urban Development.

Do you know anything about the process that went on after you submitted what was Government's Exhibit E1?

A No, sir.

Q Do you know whether or not there was controvery within HUD as to whether this particular project should be funded?

A I was told there was.

Q You were told there was. In other words, then, the statement that these gentlemen made to you that the application was satisfactory would not be one, then, to indicate or imply that simply by filing this application you were automatically to get the money?

A No.

Q That's correct?

A Yes.

Q It wasn't a put-up job?

A No.

Q And you are sure of that?

A All I wanted to be satisfied in performing an administrative function was that this submission had been prepared in consultation with HUD and that they were satisfied as to the form that was being given to them.

MR. LAND: I have no further questions.

THE COURT: Anything further, gentlemen?

MR. MORRIS: No, your Honor.

THE COURT: Thank you, Mr. Fried.

(Witness excused.)

THE COURT: Call your next witness.

MR. MORRIS: Mr. Lumbard, please.

E L L I O T L U M B A R D , recalled.

THE COURT: Mr. Lumbard, I am sure with a lawyer it is not necessary, but the law says I have to, when a witness resumes his testimony, remind him his testimony is under oath.

MR. LAND: Before Mr. Lumbard testifies, during the course of Mr. Fried's examination we had made numerous motions to strike his testimony on the ground appropriate foundation had not been laid either as to the expertise upon which he was testifying or as to certain facts or conclusions as to which he was testifying. Your Honor said, "Let's hear it now and make the appropriate motion when his testimony is completed."

Unfortunately, his testimony now runs over 600 pages. My suggestion is that we renew that motion to strike and perhaps in the post-trial memorandum point out exactly where the appropriate motion would lie to strike where there has not been a sufficient connection or establishment of a foundation rather than taking the Court's time at this moment to go through the entire testimony.

THE COURT: I can appreciate your concern, but, first, wait until he has actually finished and then formally place your motions on the record. I would then reserve decision on your motions and then give you full opportunity to amplify the bases for your motion.

MR. LAND: Thank you very much.

DIRECT EXAMINATION CONTINUED

BY MR. MORRIS:

Q Mr. Lumbard, you testified that at the time you were having discussions with respect to the development of a Mitchell-Lama project by the Trinity School that you worked on the proposal.

Now, had you had any prior ~~schools~~ experience with a Mitchell-Lama project at or about that time?

A In what respect?

Q Any experience with handling a Mitchell-Lama project in New Rochelle.

A No, I had not, as a matter of fact. Glover Johnson, the chairman of our board, had done one in New Rochelle in connection with a hospital.

Q And didn't you have something to do with that?

A No, I had nothing to do with that.

Q In connection with that, did that give rise to your having anything to do with the selection of Brown & Gunther

as the architects?

A Mr. Morris, I had nothing to do with that selection. Mr. Johnson made the selection. Mr. Johnson was chairman of the board of a hospital in New Rochelle whose proper name escapes me, but, in any event, they had built at least one nurses' dormitory under Mitchell-Lama and used an architectural firm called Brown & Gunther and when the issue came up who would be Trinity's architects, he presented their name. We inquired into their competence. They had done other Mitchell-Lama work and they were ultimately selected by the school.

Q Did there come a time after the letter of December 18, 1963, where you had a meeting with the people at the Housing and Redevelopment Board with respect to the development of a project by Trinity?

A Yes.

Q Would you tell us when that occurred and who was present at the meeting and what was said?

A Well, to some degree I testified yesterday about this subject. As best as I can recall, the meeting was in the spring of 1964. I am unable to state the exact month or day. There was present for the board Mr. Mullen, Mr. Evans and Mr. Fried, and a Mr. Ratensky, whose exact status I am unclear on but I believe he was called Commissioner at that meeting. Whether he was a member of the board or a State Commissioner,

I cannot state.

There were present from the school Mr. Johnson and myself and Mr. Perlstein of your office. I am unclear as to whether there were other people there, but I recall those people being there and those people participating in the meeting. It was held across the street in space then occupied by the board in Mr. Mullen's office. That I took to be a City rental space although not a City building.

Q Was that 2 Lafayette Street?

A I don't know the number of it. It is the building immediately across from the courthouse.

The meeting was organized at the request of both parties, the City and Trinity, to talk over face-to-face between the board itself and Trinity what would be the particular interest of either side in going forward.

Do you want me to go further?

Q Yes. Tell us what was said at that meeting and by whom.

A Well, I cannot recall the specific discussion or a specific statement made by anyone at this date, but I do recall the substance of what occurred there and who said what.

THE COURT: That is what we want.

MR. LAND: I call under the best evidence rule whether there was a written record of that meeting.

THE COURT: Was there?

THE WITNESS: I made none.

THE COURT: Did you notice anybody making any record?

THE WITNESS: I had the impression Mr. Perlstein --

THE COURT: Please. You are testifying. Not impression. What is your best recollection? Was it a recorded meeting? That is all. You know as a lawyer whether it was a recorded meeting.

THE WITNESS: There was no transcript.

THE COURT: You do not know if anybody was recording the minutes? Whether it was transcribed or not is not the issue.

THE WITNESS: No minutes. Notes were made by various people.

THE COURT: If you do not remember who said what, will you tell us what was said as you best recall it.

THE WITNESS: Yes.

MR. LAND: Excuse me, Judge. If notes were made at the meeting, perhaps --

THE COURT: Those are individual notes, Mr. Land. Those are notes, and correct me if I am wrong, Mr. Lumbard, are you referring to notes people usually make of what takes place at a meeting so they can use those notes to remind them of what they wish to say when their turn comes to speak?

THE WITNESS: Yes.

MR. LAND: It wasn't a secretary's meeting notes?

THE COURT: He says no.

THE WITNESS: And I made no notes, Mr. Land.

THE COURT: Go on.

THE WITNESS: The essence of Trinity's position was that the school was fearful about undertaking the kind of financial commitments which would be involved in a project of the scale that the City was anticipating would have to occur if anything were to occur, namely, an apartment house with 200 or so units plus a school building, and the school building would have to be financed solely by the school, and the apartment house, whatever it is financing, would require some advance money by the school because at that time the Mitchell-Lama program was in the order of a 97-percent program even for non-profit institutions and Trinity had to put up some front money which ultimately turned out to be some $460,000.

And there was a lot of discussion about our concern as to the financing. There were preliminary inquiries by the City as to who would be the architects and the attorneys and if we knew who would be the contractors.

We were pretty much selected in terms of the former two, namely, Demov and Morris and Brown & Gunther but not as to a contractor, and there was a feeling in our board that the

contract must be selected by some kind of private bidding process and this could not occur at this time.

We were involved with a construction firm called Thompson Starrett to try to get a tentative construction cost so we could get a handle on the financial estimates. They may have had somebody at the meeting. I am not clear on that but they were at most meetings at that time.

We also expressed great concern about the plan, the West Side Urban Renewal Plan. One of our purposes in selecting Brown & Gunther is that we were trying to assure ourselves as to the solidity of the plan, Brown & Gunther having been the consulting architects to the City in the development of the plan and their beginning plans had their name right on it, stamped down, and Bernard Gunther, who was a principal in the firm, and George Brown, who was also a principal in the firm, had participated in working with the City over a period of time in actually coming to what property should be within it and what should go. They had each been with the City government in prior stages of their career and were expert in these kinds of housing matters.

THE COURT: Mr. Lumbard, may I interrupt you? Who represented, on that occasion, Trinity?

THE WITNESS: Mr. Johnson and myself.

THE COURT: Don't you remember what you said and what

Mr. Johnson said? That certainly I should think might have stood out in your own mind, your own expressions, and your colleague's, Mr. Johnson's. Do you remember what you two said on that particular occasion?

THE WITNESS: Yes, sir. In substance that is what we said. We expressed concern on the second level about the solidity of the plan and could we rely on what was about to occur here. Because of what I said at first, a fear of the financial cost of this and its impact on a school of our size without a large endowment fund, we were very timid, if I may say, about going forward. We said that.

Mr. Mullen then very strongly spoke on behalf of the board, and at times all of them did, about how they very much wished Trinity to participate, that they would extend to us all reasonable courtesies and speed and dispatch and if we had questions about constructions costs or whatever in comparable projects, they would make data available to us, etc.

They spoke about how -- especially Mr. Mullen -- they had attempted to get Trinity to participate in the prior several years and that had not occurred.

They then talked about the plan in response to our fears, and their comments were, especially through Mr. Mullen, that we could rely on the plan, that the plan represented the

best judgment of the City government at the time and had the full support of the Mayor and the governing officials. They told us all three of them were unanimous about how they felt about the plan. There was a large chart of the West Side Urban Renewal Area there in the room at the time and it had various colored sections with different designations of planning and all. Our Site 24 was designated middle income housing.

We had a talk about the fact that there was across the street on 90th Street to the south of us a low income project scheduled and was partially in being, I believe, at that early date, and that there was scheduled across the street from Columbus Avenue a low income public housing project which later came into being, and that there were various Mitchell-Lama designations, each of which would be middle income housing around the immediate school site.

We talked about those sites and we were told by the City that those sites would be what the plan stated.

Q But there was some conversation about the desire of the Government officials to retain an institutionlike Trinity school in the area?

A Yes.

Q Would you tell us about those?

A They said to us quite frankly that they were most

anxious to not lose any church groups that were in the area, and there were a number, that they were most anxious not to lose any schools, that they were looking to keep the institutions of the neighborhood together from a leadership point of view and they felt since we were the largest, in both numbers of people and space and so forth within the specific West Side Urban Renewal Area, that we represented a sort of leadership situation and they were very anxious to have us come in.

Q Was there also discussion with respect to the fact that the projects were contemplated to be integrated?

A We asked about that because it was stated in the objectives of the plan in terms given to us and which I no longer have. They were long since discarded. And those objectives were that there would be a fully integrated neighborhood, integrated in every respect. We discussed this on that occasion with those men, and it was our statement that we were concerned about the rentability of the apartment house. With 200 apartment units and at that time an apparent ghetto kind of situation where were we going with a 50-year mortgage? And we specifically said to them, as we have said over the years to the City, we are simply uninterested in staying here or investing money to go from one ghetto to another with new bricks. It made no sense to us and since we,

as trustees, were under a 50-year obligation and we were therefore binding our successors when we would be long gone, we didn't think it would be responsible of us to let that occur.

And they specifically told us that the plan would stay as it was and it would be an integrated area economically, racially, religiously in every respect, and it was to that ideal that we committed ourselves and that's what we think this law suit is about.

Q And how much was invested or obligated by Trinity School in order to carry through that objective?

A Well, the total project dollars are over nine million and they run as follows: The school invested about -- I am using rough figures -- about three million dollars in new school facilities of its own dollars which are not financed by any Government assistance. On that it has with the Bank of New York For Savings, the Savings Bank of New York, about a one $1,250,000 private mortgage.

There is just short of $500,000. I think it is in the order of 460,000, as I said, front money, as it is called, of the school in the apartment house aspect. And then the school undertook a mortgage, a 50-year mortgage, with varying interest rates according to the formulas by which these now work with the City, and that is a rather lengthy story in

itself because they vary from time to time, in the order of $4,600,000.

We regard that as a lot of money.

Q So that the total investment was around nine million dollars?

A Yes, something over that. That's aside from furnishings and other aspects which costs over several hundred thousand dollars.

Q Would you describe for the Court what the project was like, just what occurred physically, the construction of the school and then the housing on the air rights above the school?

A Another reason the City wanted us there was that in order to make this feasible, there would have to be several novel developments occur, the most important of which was to develop a new air rights concept and if we were willing to put ourselves into that situation, Mr. Mullen and Mr. Ratensky, especially, who I gather was sort of a planner and much interested in this sort of forward developing thing, wanted us to do it.

What it required was that the land, the fee, would go to the school. The school building would occupy the whole flat bottom in, if I may use it in simplistic terms, a horizontal two-story structure. Arising out of the middle of

that would be an apartment tower and that posed all kinds of complexities. Essentially to solve this problem, what had to happen is that the school and the City had to come to a lot of agreements by which a tax and zoning block was carved out of the air which goes to the top of the building, some 30 stories, and the bottom of which is at the fourth floor.

The City and the school entered into a series of agreements, I gather they are here in evidence, by which that block of air, the air rights, were sold to a separate wholly-owned subsidiary called Trinity Housing Company. However, that block had to be supported. So there were a lot of complexities involving easements for the columns that supported the apartment house that went down through the school building and which was owned by the school, and it got down into a lot of things, like suppose the water pipes burst in the apartment tower and they flooded the school building, what right, and all that sort of thing.

Working all this out I am told was really the first occasion that this had happened in a City housing project or any kind of City-related matter and it has, indeed, become the formula, I believe, for the New York City school projects plan which was set up to try to work out combined housing and school building sites with a lot of kinds of formulas that were developed in this building.

I mention that because that was a great part of the inducement of the City to work with us. They really warted to try to get this to see if it could be a pattern for new kind of urban uses of land and it has become such.

Q After meeting with the Housing and Redevelopment Board, did you have anything to do with an Ad Hoc Building Committee for Trinity School?

A I have not finished that meeting.

Q I am sorry.

THE COURT: That is exactly what I wanted to say. I did not get the impression he had completed it.

MR. MORROS: I am sorry, your Honor.

A We had considerable talk about the tax situation that would exist. There were issues at that time which are not clear in my mind because of the changes over the years, but I do recall a lot of real estate tax abatement discussion, and the City absolutely made clear to us that we would get tax abatement on the premises. This was kind of tricky because it's tax abatement for the air rights substantially. the only part of the school tower being the easement on the columns.

So it meant a tax abatement contrary to the usual pattern which is for the land itself. It is really tax abatement for space. That is just one of the many kinds of things

which were worked out and where there was discussion.

The City said to us, would we undertake to put a mix in the house of 80 percent middle income and 20 percent low income tenants. They asked us that. They did not make it a condition.

This was discussed in part with the integrated concepts that we were willing to undertake. We asked what kind of people would these be, who would select them, because we are not in the business of selecting welfare tenants, or whatnot, and they told us that lists of names would be sent to us and we would be able thereafter to have choices as to which of different kinds of people within the categories, including welfare, we wished to select, so that, however, the building came up to 20 percent.

THE COURT: 20 percent?

THE WITNESS: Of low income.

THE COURT: You have to be specific every time.

THE WITNESS: 20 percent of the tenants.

THE COURT: Of the total low income tenants?

THE WITNESS: Yes.

A (Continuing) We were also asked to do something that we were told had not been asked before of anyone. This was only tentatively broached at this meeting. It was much more a subject of discussion later on. We ultimately agreed

to do it. That is called "skewing" by which they said, would we undertake as landlords to charge the middle income tenants more rent than they would otherwise have to pay under the Mitchell-Lama law so, in effect, they would subsidize part of the rent of the low income tenants.

This, I think, for obvious reasons, made us very fearful because it meant that somebody living on, say, the eighth floor might have disputes with the children of a low income person in the immediate apartment next door and, added to whatever else might be explosive about that is, he is in effect paying part of their rent. This aspect of the project within our own Trinity family has probably caused us more difficult than anything else, because no one could tell us of another building that we could go and inquire about as to how this worked out. And this is back in the mid-60's. We ultimately chose to do that and we have spent a great deal of time on the tenant selection and the internal workings of the building, and I am pleased to so that the building has worked. That, for some reason, hasn't been publicized, but we are just as happy that it hasn't.

THE COURT: I think I gather the implications of all of this, but I would prefer, if you can, Mr. Lumbard, to give me some more of what was actually said at the meeting and what the response was.

THE WITNESS: All right.

THE COURT: You do branch away from it. What you do is give us what you understand is the net result of the effect of it, but I am concerned with what was stated at the meeting. I do not expect you to give me the exact words, but certainly the substance of what was said, if you can recall it.

THE WITNESS: Yes, sir.

Mr. Ratensky had a series of preliminary drawings and models and sketches of various buildings in the West Side Urban Renewal Area, and he was concerned with what kind of building would be placed on what kind of plot and how it would relate to other buildings in that area, because they were engaged in trying to plan how the entire area would work out. In other words -- well, they said to us, "If you undertake to do this you will not be allowed to build right out to the block line. You will be expected to put an abnormal amount of money into design considerations, architectural fees beyond the normal, and that this is the policy of the West Side Urban Renewal Area and it is one of the reasons we are doing this" -- they said this -- "We are trying to upgrade the area, we are trying to get more design in the area."

We said that tentatively we accepted those goals but obviously it would depend on how the dollars worked out as to feasibility, and what our architects would come back

with b[illegible]y of a specific plan.

We said that we preferred this be a State Mitchell-Lama because that was the recommendation of our counsel and the architects, and that was the specific desire of Mr. Johnson who as I said, had done at least one, maybe more, projects with the State of a relatively similar nature.

They agreed to that and it was definitely understood, all filings would thereafter be with the State Department of Housing headed by Mr. James Gaynor.

THE COURT: Would you mind now in the remaining minutes before we go to lunch, will you be good enough to tell us what you best recall with respect to the intervention of these problems. You kind of summed it up before.

THE WITNESS: We said that we were concerned about where this neighborhood was going. There were the fears of the school being moved upstate to Pawling, New York, about which I testified yesterday. We thought the City officials should know that and, frankly, we were engaging in a study with them, but integral to our being in a position some day to commit ourselves with some kind of understanding on this subject, we said that we did not wish to trade one ghetto for another. That phrase was used then. I do recall that and it was used through the years because that is the essence of our position.

We said that we were prepared to accept, indeed would desire an integrated neighborhood. Integrated economically, religiously, racially, in every respect.

We desired to have a spread of housing which would involve low income in some proportion, high income, if you could get them there, the nature of Central Park West one block away was a relatively high income area

and we thought that was materially important. We were concerned that there be provision in the paln for schools in the neighborhood -- I mean stores, they assured us there would be stores and that these stores would have some kind of spread of services, that is, it would be a part of the economic variety that would go into the area.

THE COURT: What was the response to your concern on that score by the public officials who were present at that meeting?

THE WITNESS: They told us that we shared objectives; that they thought the point of the plan was towards the same end that we stated and that it could only work if it went that way. Mr. Mollen specifically said that. He was chairman of the board and he said it on behalf of the City and he said that was the Mayor's view and he flatly stated to us that this was going to be the objective of the West Side Urban Renewal area.

THE COURT: Were percentages stated by him on that occasion?

THE WITNESS: At that meeting I do not recall a percentage of any kind stated. Subsequently that occurred.

THE COURT: No, but let's stick to this

meeting. We will get to subsequent later, but right now do you remember anything on that score? Was anything said at that meeting with regard to how or what percentage would be low income, what percentage would be middle income and so forth?

THE WITNESS: Well, the chart that was before us --

THE COURT: Right.

THE WITNESS: -- had within a specific plot designation by low income, middle income, brownstone housing, I have forgotten what the exact word is, but the indication was brownstones, that is the old buildings would be retained and the implication was there, I don't remember whether it was stated or not, that those would largely be middle income or upper income people in the brownstones.

They did say to us that there would be a definite objective of maintaining as much of the brownstone community as could possibly exist, not only because it would save the City dollars, but because it would make for architectural diversity and better planning, and that it would mean a different community in terms of people. It would make a spread which is what the objective was.

THE COURT: Didn't you say something before about a statement made at that meeting that lists would be submitted of potential tenants?

THE WITNESS: Yes.

THE COURT: Will you amplify that as much as you can recall on that score? What was said.

THE WITNESS: We asked in view of the fact this was a government aided project through the Mitchell-Lama program about how or what rights we, as the ultimate owner, would have to choose the tenants. If we didn't have any rights to choose the tenants, how could we be responsible for the building? How could we undertake a 50 year financing commitment?

They told us that we would have choice over tenants; that there were various formulas that involved people who were being relocated from the site, but that they would not in any way impede our ability to operate a successful building and that they also said we would like to have you consider this 80/20 formula. 80 percent which would be middle income people within the Mitchell-Lama formula and whom we would select; 20 percent would be low income people and which would include relocatees or welfare people and we would get lists of names from the City and we

could chose the names from those lists.

THE COURT: Did they say what area would be affected by the 80/20 formula?

THE WITNESS: What area?

THE COURT: Yes. That 80/20 formula would be applied where?

THE WITNESS: To our apartment house. The 200 units in our apartment house.

THE COURT: But only to that.

THE WITNESS: That is all that formula was referred to as.

THE COURT: Was there any other formula discussed at that meeting that you recall? Suppose you think on that. It is rather an important piece of testimony, I should think, as to what took place at that meeting and reflect and we will resume promptly, gentlemen, at 2:15.

Will you announce a recess until that time, Mr. Clerk.

(Luncheon recess)

A F T E R N O O N S E S S I O N

2:15 P.M.

(Trial resumed)

E L I O T L U M B A R D , resumed.

THE COURT: Won't you kindly proceed.

THE WITNESS: Your Honor, at the luncheon recess you had asked me if I could recall any discussion of a formula further than I had testified to this morning and I regret that I do not have any other such recollection.

THE COURT: Yes, you did say, however, that there were charts that were there and that they were referred to in the course of the discussion.

Am I to assume that those charts related to the percentages with respect to the tenancy as it related to the entire contemplated project?

THE WITNESS: I am unable to say that. What I can say is the chart would say on the particular site number, site number, whatever the number is, and then a description, like low income or middle income or whatever.

THE COURT: I see.

THE WITNESS: Site 30 was on that occasion labeled middle income and Site 24 was labeled middle income.

THE COURT: Thank you.

DIRECT EXAMINATION CONTINUED

BY MR. MORRIS:

Q After that meeting, Mr. Lumbard, what happened next?

A Well, the Trinity group organized itself a little more formally. A committee of the trustees was put together chaired by a Dr. Howard Craig. I was a member of that group and after a short while became chairman. That group commenced study with architects, engineers and lawyers as to whether or not the concept, as explained and desired by both the City and the school, would be feasible.

Q For how long a period would you say the committee worked on the development of these plans and this concept?

A The committee was formed in the spring of 1964 and it was not ultimately discharged until 1970. The actual planning phase was at least four years. I could not now tell you the exact time sequence, but

the cost estimates would not fit with the architectural needs or with the zoning requirements or something or other and it was at least four years before the school could come down to an actual construction loan decision.

Q In the course of that period, was there a change in the method of financing of the project from state Mitchell-Lama to city Mitchell-Lama?

A Yes.

Q Would you tell us about that?

A After about a year of the committee's existence, I was made chairman of it and it was called the Ad Hoc Building Committee of the Board of Trustees. We were simply notified one day that Mayor Lindsay wanted to take over the remaining projects in the West Side Urban Renewal area from the state and all projects in being, which were then state Mitchell-Lama projects, were to be shifted to the city as city Mitchell-Lama projects and we were one of them.

We inquired as to whether or not that meant we would have to recycle the specific building plans and architectural drawings and whether or not we could save them.

We were told that of course we could and this would cost us no extra, but ultimately that was not

the case and it cost the school about $100,000, that one switch in planning money.

Q Now, did there also come a time when you sent plans out for bidding in order to determine the costs that would be entailed in the construction of the project that was being designed?

A Yes, we did that on several occasions. The principal one involved four contractors, the HRH Construction Company, Blitman Construction Company, which ultimately received the job, Thompson-Starrett and a firm called Starrett Eken and Starrett Brothers and Eken and they were given the plans as they existed at the time and asked to make cost estimates.

We chose Blitman, which was not, I believe the lowest, but was almost the lowest and on a general basis of reputability and the kind of discussions we had with them we thought would be the best.

Q Was the project in fact built by Blitman Construction?

A Yes, it was.

Q Did there come a time when as a result of the various meetings and the negotiations spreading over this four-year period when the plans were ready and had been approved by the Board of Estimate to proceed?

A Yes.

Q Did the school begin construction on the project prior to the time of initial mortgage closing?

A Yes.

Q And would you tell us what was done with respect to financing the construction in order to be able to do that?

A The complexity of the project and the escalation in construction costs meant that the thing kept slipping out of possibility and there came a time, therefore, when there were inevitable delays ahead of city processing, all estimates of construction costs were rising and we almost abandoned the project and then came up with a new way of going about this, namely, Trinity as a school undertook the construction loan mortgage and went --

MR. DOUW: Excuse me, your Honor, could we have a date?

THE COURT: Surely.

A This was in the period '67 - '68. Construction started in '68. Trinity put itself at risk for something over $5,500,000 with a First National City Bank construction loan mortgage at a time when the state and the city had not yet completed all final commitments. It was all

d[illegible]on a prospective basis and the city kept assuring us that things would go as had been promised to us and on which we relied through the years and that, don't worry, just go ahead and commit yourself and start construction and ultimately we, the city, will take you out.

That was a phrase they used on a take-out situation and ultimately that is what has occurred.

That is, after we had built the project, the closing was held on the building, a very atypical situation, and Trinity then received the money back, but that also meant that Trinity had to finance out of its own funds a lot of the construction mortgage, which was substantial and a high risk situation because if the city had not come through, we were still committed to the First National City Bank for five million five hundred odd thousand dollars.

Q Now, during this period did a change occur in the direction or in the city agencies which administered the program by the switch from the Housing and Development Board to the Housing Development Administration?

A Yes. With the arrival of Lindsay administration a man named Jay Nathan became the principal city

figure with whom we dealt. We met with him several times. I met with him personally.

MR. GOLD: Excuse me, when was that?

A From shortly after Mayor Lindsay's inauguration throughout Mr. Nathan's tenure.

Q Around 1966 or '67?

A Yes, during that period.

Q Did you meet with Mr. Nathan after he took over from Mr. Mollen and have similar discussions with him as to those that you had with Mr. Mollen?

A Yes, we did.

MR. LAND: I wish to strike the word "similar". It is did he have discussions.

Q Will you tell us what those discussions were?

THE COURT: All right.

A We were concerned as to whether or not the Lindsay administration would continue to follow through with the representations that had been made to us by Mr. Mollen under the Wagner administration.

We had not yet committed ourselves in a final sense and it was therefore important to gain that assurance. We met with Mr. Nathan --

THE COURT: Did you review the points point by point as to what you had been assured and what you

would like to feel would continue?

THE WITNESS: Yes, we did.

THE COURT: That is what I want. Will you give me that, please?

THE WITNESS: Yes.

THE COURT: That is testimony.

A We discussed the general neighborhood, the West Side Urban Renewal plan and we asked Mr. Nathan if the intent of the City and the new administration was to have an integrated neighborhood, integrated both economically, racially and religiously and he said it was.

We asked him about the West Side Urban Renewal plan and he said that it was the intention of his administration to continue to fulfill the plan and we talked to him also with these same kinds of big charts of the area right in front of us and at that time Site 30 was also labeled as middle income housing and Site 24 was as well.

We talked to him about the particular nature of the financing because at that time the City was now becoming more involved in the project and we were apparently going from the state to the city situation and we talked to him about the tenancy that would be in

Trinity House, the same 80/20 formula that I told you about.

We talked about all the material matters that were before us all the same kinds of assurances. In other words, they desired that we go ahead.

MR. LAND: Your Honor, the phrase "he gave us the same kinds of assurances." We object to that characterization.

THE COURT: Yes, it is a characterization, which I expect would be sort of a summarization to be fortified by actual proof. I cannot accept that as the equivalent of proof.

I allow those things generally so as to indicate what I am to watch for. That is what the witness maintains took place.

Now go ahead and show it did take place and so, Mr. Morris, I want you to know that while I will let that stand and won't strike it, I will strike it if it is not fortified by detailed proof. It is a summarization.

MR. DOUW: Your Honor, could we have a clarification whether this is one meeting or a series of meetings?

THE COURT: Yes. You see, Mr. Lumbard, you

are entering upon vital testimony affecting the instant outcome of this suit and what you have been doing in large measure is to give us the essence or the substance, rather, or enclosure the word "effect" of the conference rather than, I do not know the exact words, Judge, but here is what we said in substance and the commissioner responded in substance saying so forth.

Will you try to do it that way?

THE WITNESS: Yes. We met with Mr. Nathan and I would say within two months of his assuming office, whatever date that may be.

THE COURT: Okay.

THE WITNESS: The meeting was held at our joint request. He wanted to meet us and we wanted to meet him. In attendance was Mr. Nathan, I believe Mr. Ratensky, whose capacity at that point I am not sure of, an architectural man named Hugh somebody or other, whose last name I cannot recall, he was a city official, our counsel, Mr. Guenther, our architect, myself and I believe that there was one other member of the building committee, but I am vague on that. I think it was Mr. Heard, Edwin Heard.

The meeting was in Mr. Nathan's offices. He asked us if our intention was to proceed because

upon assuming office he was taking a look at all the pending projects.

We said that it was insofar as we could make it as a matter of feasibility. If the dollars became possible and if the plans were approved and they had not yet been finally approved.

We asked him about the West Side Urban Renewal area in which we were to be located. We asked him about the plan.

He said it was his intention and the intention of the administration to proceed rapidly with the plan. There was a man there from his office named Van Velde de or some such name --

Q Van De Velde?

A Van De Velde. He was to be specifically concerned with the West Side Urban Renewal plan under Mr. Nathar and fulfilling it as described to me an on-site local representative of the city. He participated in the discussions.

We asked if the intention was to have an integrated community and all the city representatives, including Mr. Nathan, said yes. That is in substance, sir.

We asked about the mechanics of processing

our application as sponsor and all the kind of government approvals that were necessary. There was a lot of talk about that which I don't now recall other than there seemed to be a way to work everything else out if we all worked at it.

They expressed great desire that Trinity make a final commitment. This file had been pending a long while in the city and we had not been able yet to see our way to do that.

In other words, there had been some years that it had been on file.

We said that we were making every effort to do so and hoped that we would in the near future.

These discussions were held, there were up on easels and sort of desks various maps of the area and we specifically discussed the various locations of buildings and particular kinds of buildings during that meeting.

I recall that at that meeting Site 30 was labeled middle income housing and Site 24, the Trinity site, was labeled middle income housing.

THE COURT: Was anything said?

THE WITNESS: Yes, we specifically discussed those things.

THE COURT: Say it. Tell us what you said or the substance of what you said as you best recall.

THE WITNESS: The substance of what we said, the Trinity representatives, was that we now had public housing directly across from the school on 90th Street. We had public housing directly across from the school on Columbus Avenue and that it was important to us what might happen on Site 30 and they said it was going to be Mitchell-Lama middle income and this they were looking for a sponsor.

THE COURT: Now, that is testimony.

What else?

THE WITNESS: I remember Mr. Nathan talking a lot about the city of Philadelphia where he had some history in the public housing field and that now complex the West Side Urban Renewal area was and how much he was personally committed to it and interested in it.

Q Was there discussion about the marketability and rentability of the space that you were contemplating construction?

A Yes. There was. One of the qualifications to do our Mitchell-Lama housing, we were told, was that we had to demonstrate that the apartments could be rented and that the best market estimates that could be

made showed, therefore, that if the city invested all these funds or guaranteed these mortgages it was with a reasonable prospect that the apartments could be utilized and ultimately the mortgage paid off and therefore the project would be feasible.

We had to hire and did hire the firm of Selzberger-Rolf and a gentlemen named Edward Selzberger, who is the head of that firm was the principal person to whom we talked,to make a survey of the marketability of renting units in the West Side Urban Renewal area as of that time and their best estimate. This report was submitted to the City and the forecast that -- in essence, I am now summarizing because that is my only recall --

MR. LAND: Do we have a written report at this point?

THE WITNESS: It was a written report, but I have no knowledge of where it is.

THE COURT: Was it the subject of this discussion?

THE WITNESS: I believe it was discussed there at this meeting.

THE COURT: Do you remember what was said on that score?

THE WITNESS: The subject that was discussed was simply that we would have to demonstrate marketability as one element of overall economic feasibility. That we couldn't just come up with figures which showed the construction costs, we also had to have some economic data that showed this project would have income sufficient to carry whatever the cost figures would be and we did that.

We also got a lot of information from Park West Village, which is nearby, and someone, I don't know who at this point, talked to that group.

We hired a George Piantadosi. He is an independent real estate consultant on this and other economic issues and he had been a staff member of the State Commission of Housing, Division of Housing, and he assisted us in making this kind of survey as well.

We discussed these items with Mr. Nathan and came to our general conclusion that if the area was to be as they stated, that we thought we could rent these apartments at the prices necessary to carry the mortgage.

MR. GOLD: Your Honor, I have some confusion as to the discussions that Mr. Lumbard is testifying to.

I was under the impression we were at one discussion.

THE WITNESS: This is the meeting with Mr. Nathan.

MR. GOLD: After the Lindsay administration came into office at which time the survey, this was pre-survey time.

THE WITNESS: No.

MR. GOLD: Now it seems to me we are moving into a post-survey discussion and we haven't set a date, we don't know the participants.

THE COURT: Maybe I got it wrong, but I gather what the witness has been doing is to tell us about documents and surveys that were made prior to the meeting which, however, were the subject of comment at the meeting. Am I wrong?

THE WITNESS: You are right.

THE COURT: All right. That you took up at the meeting the survey with regard to the economic feasibility, is that not one?

THE WITNESS: That's correct.

THE COURT: What else did you take up that had theretofore been done and that was actually taken up at that particular meeting or discussed or commented on?

Anything else that you recall?

MR. LAND: Judge --

THE COURT: Wait a minute. Let him finish.

THE WITNESS: I recall some discussion with Mr. Nathan also on the subject of tax abatement.

THE COURT: At the same meeting?

THE WITNESS: At this meeting, yes, which would involve the City real estate tax and would the discussions and the representations we had had in the past continue and he said yes. That is this project would qualify for tax abatement.

THE COURT: Mr. Land.

MR. LAND: Your Honor, I am reluctant to object again.

THE COURT: You shouldn't be reluctant provided the objection has substance.

MR. LAND: I hope this one does. Mr. Lumbard --

THE COURT: Your batting average so far hasn't been bad.

MR. LAND: Mr. Lumbard related a statement made to him by someone who Mr. Lumbard says told him that in order to market the apartments the area must remain as it is and he has also testified that this

man's remarks were contained in some written document, but we would object to Mr.Lumbard's hearsay statement, A, because it is clearly hearsay, offered for the truth of the matter of something said by someone else which material was reduced to writing and we don't have the writing here. I respectfully move that we strike that testimony as to the characterization that the area must stay as it is.

THE COURT: I felt as we went along that you gentlemen would be taking mental notes or making physical notes and then on cross-examination you would hammer away at what you regarded as untenable or unfirm and having succeeded in yoru own mind in accomplishing that, you would then move to strike.

At this juncture the best thing to do is to leave it alone and see whether he weathers the challenge to what he has to say on direct. There being no jury I can see no harm in it and we actually save time. I will then consider your motions to strike.

MR. LAND: Thank you, your Honor.

MR. GOLD: Just one more clarification, your Honor, are we still talking about the one meeting two months after Mr. Nathan went into business, is that correct?

THE WITNESS: That's right. The last thing I recall saying is that his Honor asked me if there was anything else I remember and I said I remembered the subject of tax abatement.

MR. GOLD: The same meeting?

THE WITNESS: Yes.

THE COURT: Thank you.

Q Were there any other things discussed at that particular meeting?

A I have no recollection of them.

Q Now, were there subsequent meetings subsequent to the one you have just testified to with respect to this project?

A Well, I am not sure I know what you mean. There were many meetings with State, City people over a long period of time.

Q Did there come a time when a brochure was prepared of the project which was submitted to the various Government agencies for approval?

A Yes.

MR. LAND: Clarification: the project being site 24?

MR. MORRIS: I am talking about Site 24.

THE COURT: Here at last, gentlemen, even at the expense of repetition, be good enough to constantly say 80/20 and define what 80/20 means every time you use it and you will find in the long run it will pay off.

Be exact. What are you asking, Mr. Morris? Will you restate it?

Q Did there come a time when a project brochure was prepared for the submission for approval of the Trinity project for Site 24 to the City Planning Commission and the Board of Estimate?

A Yes, there was.

Q Was that brochure approved by the Housing Development Administration?

A So far as I am aware, it was.

Q Was it approved by the State Division of Housing?

A Yes.

Q And then was it submitted to public hearing before the City Planning Commission?

A Yes.

Q And approved by the City Planning Commission?

A Yes.

Q Then was it submitted to the Board of Estimate and approved by them?

A Yes.

THE COURT: Where is it?

MR. MORRIS: It is in evidence.

THE COURT: So, show it to him. Is this it and then show him the exhibit and then we nail that down, you see. Have you got it?

MR. GOLD: No, your Honor, I don't believe it is in evidence.

MR. MORRIS: The only thing that is in evidence, your Honor, is the contract itself which was entered into between the City and the Trinity School and Trinity Housing Corporation.

That is in evidence.

THE COURT: Mr. Morris, you asked him about a brochure, didn't you?

MR. MORRIS: Yes, sir.

THE COURT: Is the brochure available?

MR. MORRIS: It is available, but we don't have it here now.

THE COURT: All right, that is an answer. Next question.

MR. GOLD: Your Honor, one moment. Mr. Morris asked if there came a time and then several events took place and I don't know what time came.

THE COURT: All those events mean nothing to me because they are not testimony. They have not been nailed down. It is just a general comment.

MR. GOLD: Thank you.

THE COURT: He now tells us that this brochure, which I gather incorporated the entire prospectus, so to speak, is that too broad a term or doesn't encompass it?

THE WITNESS: I have come to understand prospectus differently. It contained a series of schedules as to construction costs, as to exactly what the property lines would be, as to what the building would be, etc., that kind of material.

THE COURT: All right. Now the different authorities that Mr. Morris mentioned in his questions, to whom this brochure was submitted and hearings were had and an approval, that was over what period of time in a general way as you best recall? Have you got any dates on that?

MR. MORRIS: Yes, we have. It is around 1967 and '68.

THE COURT: All right, now go ahead with your next question.

Q As a result of those meetings, approvals and so forth, was a contract entered into between Trinity School, Trinity Housing Corporation and the City of New York?

A Yes, it was.

Q I show you Plaintiff's Exhibit 14, agreement between City of New York and Trinity Episcopal Schools Corporation, dated June 20, 1968, and ask if this is the contract that was entered into with the City of New York?

A Yes, it is.

Q Does that contract have attached to it the provisions of the Urban Renewal Plan for the West Side Urban Renewal Area?

A You mean at the back of it?

Q At the back of it as an exhibit.

A Yes.

THE COURT: He says, yes.

Q Was there a closing of title --

THE COURT: Mr. Morris, I beg your pardon. You know what you are doing, we all do, but please forgive me if I get a little impatient. It seems to me you undoubtedly are going to offer that in evidence, are you not?

MR. MORRIS: It is in evidence.

THE COURT: Just make a recital. I don't have to wait for him to examine it. You tell me what it contains and unless they say anything to the contrary, that goes because it is in evidence. Go on now.

MR. MORRIS: It is in evidence.

THE COURT: Do not ask him does it contain this and contain that. It is in evidence. You tell me.

What do you say it contains and that you want to bring to my attention?

MR. MORRIS: It contains the contract under the Mitchell-Lama Law for the mortgage on the property. It contains compliance in the formulation of the housing company for the development of the housing.

THE COURT: Right.

MR. MORRIS: And it contains the conveyance, agreement for the conveyance of the land to the housing company for the construction of the project.

THE COURT: Thank you, Mr. Morris.

Q Pursuant to this, did the project commence construction?

A Yes.

Q Would you tell us about when construction began on the project?

A It is my best recollection currently around the spring of 1968.

Q How long did construction proceed and when was construction completed?

A In December of 1969.

Q So that construction took about 18 months for the entire period?

A Whatever.

Q Now, after construction was completed, what took place with respect to the occupancy of the project?

A The school occupied the school portion and the housing occupied the housing portion.

Q Was there a procedure for the declaration of eligibility and renting of apartments established by the Government agencies?

A You mean as to who would be tenants?

Q That is right.

A I am not sure I know the exact title you are talking

about. There was a system set up --

Q That is what I mean, yes.

A -- by which various names were suggested to Trinity Housing Company as potential tenants.

THE COURT: Were you a part of that?

THE WITNESS: Yes.

THE COURT: All right.

Q Who handled the renting of apartments and the management of the property after completion?

A The firm of Selzberger Rolf was retained by the school to be the regular form or style of managing agent of the apartment house.

Q Did they continue with the management so that they are still managing it up to the present time?

A Yes.

Q Was there an arrangement made with respect to the acceptance into the project of low income families as well as middle income families?

A Yes.

Q Would you tell us what was done with respect to that?

A Immediately -- my best recollection at this time is shortly before this was all concluded, some representative of the City, I believe Mr. Nathan or his delegate, contacted our

counsel and said that the City would like to have us change the formula of 80/20 to 70/30.

THE COURT: So far that is hearsay. Your counsel. That I cannot take.

THE WITNESS: I heard about it from counsel.

MR. MORRIS: I submit it is not hearsay because that is a statement by a City official and they are defendants in the action. The City official he testified said that to him.

THE WITNESS: No. I said I heard from counsel.

THE COURT: He heard from counsel.

THE WITNESS: I heard it from you.

MR. MORRIS: I am sorry, I thought you said you heard from Mr. Nathan.

THE WITNESS: I heard that you told me that Mr. Nathan had communicated or his delegate.

MR. MORRIS: I am sorry, you cannot testify to that.

THE COURT: You be sorry not to him, but to me, too.

MR. MORRIS: I am, your Honor.

THE COURT: I strike it.

THE WITNESS: In any event, the formula changed from 80/20 to 70/30.

Q When the building was occupied, what was the

percentage or ratio of low income families admitted into the building?

A 30 percent of the total tenancy and the school by that time had adopted the policy as requested by the City of the skewed rents so it was 30 percent plus skewed rents.

Q Was there any public housing leasing at that time or was it all skewed rents?

A I think there was some of both, but I don't recall at the moment.

Q Now, has the building been operated continuously since that time by the Trinity School?

A It has been operated by the Trinity Housing Company.

Q I mean Trinity Housing Company.

A Right.

Q What office do you hold in Trinity Housing Company?

A I am the president.

Q You are the president and as president do you oversee and supervise the management and operation of the property?

A Yes.

THE COURT: When did you become president?

THE WITNESS: When it was first formed, the day it was formed.

Q Could you tell us approximately when the Trinity

Housing Corporation was first formed?

A I believe it was formed in 1969 or '70.

Q Were you then designated as president of the corporation?

A Yes.

Q Have you continued to operate as the president since that time?

A Yes.

Q Are you presently the president of that corporation?

A Yes.

Q Are you familiar with the conditions and circumstances that have existed with respect to the Trinity School project and the West Side Urban Renewal Area subsequent to the time that the building was opened and occupied by the various tenants and the school?

MR. GOLD: Your Honor, I object to the form of the question. It is very broad.

THE WITNESS: I am not sure I know what you mean.

THE COURT: Wait a minute. The witness just got through saying, "I don't know what you mean" which compels you to reframe it.

MR. GOLD: I am sorry.

Q Subsequent to the time that the building was occupied, would you describe the circumstances that existed

with respect to the operation of the property itself? Would you tell us what occurred?

A The circumstances as to operation?

Q Yes, what occurred? Did the property continue to operate; did it remain fully rented or were there vacancies and all the various other aspects of management.

MR. LAND: Could we have one of these at a time. There are about eight questions in one.

THE COURT: Which are you going to select. Take it slowly.

Q Would you tell us what the tenancy was. Was the building filled up at the beginning?

A Yes.

Q It was. Did it remain filled up or did vacancies develop?

A It has been almost totally rented since it opened and as to this day.

Q Has it maintained the same occupancy ratio that you described occurred at the beginning?

A Yes. By that you mean the 70/30?

Q That is right.

A Yes.

Q Have you observed --

THE COURT: I thought it started out with the 80/20

ratio.

MR. MORRIS: No, it did not, your Honor.

THE COURT: It never did?

THE WITNESS: No. That is why I wanted to get into the record before --

THE COURT: I do not want what you want, sir. You cannot be the advocate on the stand, see. Remember, I have got to try to make sense out of this and I have got to follow it and you have got to teach me. You have got to tell me what the evidence is so that I can understand what took place. So far I do not know any reason why from 80/20 it became 70/30. He offered some testimony which was hearsay and it was stricken or should have been, if I did not, I do it now, that was said to you, but it is not before me. I do want to know how it came about that all of this talk about the formula 80/20 and the positiveness and the reassurance and then again another reassurance suddenly is thrown to the winds and the formula 70/30 begins to operate. I want to know all about that. That is important in my life.

Q Would you tell us what occurred?

THE COURT: He does not know. It was told to him by you.

Q Do you know, Mr. Lumbard?

A I do not know of direct testimony.

THE COURT: That is it.

THE WITNESS: I did not participate in a meeting with any City official on that subject that I recall.

Q But you do know that when the occupancy actually occurred, there were 30 percent low income families put into the building; is that correct?

A Yes.

Q And was that done under supervision of the City and with the City's approval? Aren't all tenants supervised by the City before admission?

MR. LAND: Objection.

THE COURT: Objection sustained. The first question I will allow. Will you read it, please, Mr. Court Reporter. I am sorry to trouble you.

(Question read.)

A I would not use those words, no.

Q What occurred?

A We were told that 30 percent were to be within various categories and there were a series of public programs, the names of which I never did get clear, but in any event we were given lists and the managing agent would, we relied on him, would supply these names to me and we would talk about them.

The managing agent and I interviewed a number of

people whose names are on these lists and ultimately we selected a tenant list jointly, the managing agent and myself. We had to meet certain qualifications.

Q Were there income limits applicable?

A By the City. I don't know whether you could properly call that supervision. They had a lot of books of rules about who these people were to be and how we were to run the apartment house, if that is what you mean, then we were doing it according to the regulations of the City.

Q Were there income limits applicable to the tenants who were admitted to occupancy in the building?

A Yes, there were various Mitchell-Lama project formulas which are in existence for all Mitchell-Lama projects and our formula was the same as their's.

Q Is Trinity involved in this project on a non-profit basis or a profit-making basis?

A Trinity is a non-profit school. There is no one who gets any profit out of Trinity School.

Q So there is no profit to Trinity involved in this project; is that right?

A Well, Trinity School has no profit, does not give off profit, so perforce there is no one who gets any profit from it.

Q Therefore it is a non-profit setup; is that right?

A That is your characterization. I cannot --

Q Are there any tax shelters available to Trinity School as a result of the project?

A No.

THE COURT: Hold it.

MR. LAND: There are two Trinities, one being the school and the other being the housing corporation. When you say there is no profit on the school, perhaps there is profit on the housing.

THE COURT: Precisely. It is a very simple question. I do not know why we cannot get that across. Will you please redefine and give us the full title of the two Trinities.

THE WITNESS: There is Trinity Housing Company, which is technically a limited profit housing company under the State law with a maximum return allowed of six percent. We have never made six percent, but in any event since it is a wholly-owned subsidiary of Trinity School, whatever the corporation makes it pays to the school.

The school, however, in turn, pays no diffidence dividends or profits to anyone so there is no profit.

THE COURT: Now that is clear. Next question.

Q Are there any tax shelters enjoyed by anyone as a result of this project?

A No.

THE COURT: Wait your turn.

Q Now, in connection with the operation of the property, are some of the apartments in the Trinity House rented to members of the faculty of the Trinity School?

A Yes.

Q Now, since the opening of the project and the extension of the school, would you describe the area in which the property is located and tell us what has occurred with respect to that area and its relationship to the Trinity School?

A I am going to have to ask you to be more specific with that question.

Q With respect to what has occurred in the neighborhood with respect to the nature of the people occupying the neighborhood and any situations that have developed since the school opened with respect to that?

A Since the new building opened.

Q Since the new building opened and the school?

THE COURT: You did not finish.

Q Would you describe the situation in the West Side Urban Renewal Area with respect to the occupancy of the area and its effect upon the school and the housing project after the school opened and subsequent to 1970?

MR. LAND: Objection, your Honor. No foundation that the witness is competent to testify on that subject.

MR. MORRIS: May I inquire further, your Honor?

Q Mr. Lumbard, what activity or to what extent have you personally engaged in activities with respect to the Trinity School and the housing on Site 24 subsequent to the time that the building was opened in December 1969 into 1970?

A Well, I am there frequently.

Q How frequently would you say?

A Once a week or so. I get reports continually. I get the owner's reports, as the phrase goes, from the City as any Mitchell-Lama project develops, I get the managing agent's reports on a regular basis both written and oral.

I get reports from the superintendent of the building, a Mr. Hector Torres. I get reports from the school building, the headmaster, I get a lot of information about the housing project and the school. Is that what you mean?

Q Yes. Do you have any of your children attending the Trinity School?

A Yes.

THE COURT: He told us that yesterday.

Q Would you tell us during what period your children recently have attended the Trinity School?

A They have been continously there except for one year, my son graduated in 1972. Then there was the year '72-'73 when I had no child there and then my daughter transferred there this last fall.

Q How far from the Trinity School do you actually live at the present time?

A I live on 97th Street and Columbus Avenue.

Q Is that about five blocks away?

A Seven.

Q Seven blocks away. Do you have occasion to walk down and look at the Trinity School and observe the area in which it is located?

A Frequently.

Q You do that frequently?

A Yes.

Q Would you say that you are sufficiently familiar with it so that you are in a position to observe the conditions of the area and the conditions of the neighborhood?

A Well, I am not sure what you mean by conditions? You mean -- what do you mean?

Q I mean as to the nature of the occupancy --

THE COURT: You see, Mr. Morris must not lead you and he is trying very hard, certainly recently, not to indicate anything and give you a very broad question so that you can figure out what it is he would like to develop by way of testimony.

Do you understand?

THE WITNESS: I understand, your Honor.

THE COURT: Look here --

A Are you talking about social conditions?

Q Yes.

THE COURT: Is there an office that you go to in connection with this rental project?

THE WITNESS: Yes.

THE COURT: All right. Where is that located?

THE WITNESS: It is in the basement of Trinity House, the towers.

THE COURT: Very well. Do you walk from your residence at 97th and Columbus to the office?

THE WITNESS: I do.

THE COURT: With what frequency do you do that?

THE WITNESS: At least once a week.

THE COURT: May I inquire further, have you been doing it ever since this rental project got underway, opened up for business, so to speak?

THE WITNESS: Yes.

THE COURT: You have been living at the 97th Street and Columbus residence for how long?

THE WITNESS: Since 1967.

THE COURT: Very well.

THE WITNESS: I shop in the area.

THE COURT: That is what he wants to know.

THE WITNESS: I live there, I walk the streets every day.

THE COURT: Very well. Now, what he wants to know is have you observed anything in the course of your walks, I presume you pretty much take the same route from your starting point to designation; is that not so?

THE WITNESS: That is not so.

THE COURT: All right, so you vary it?

THE WITNESS: That is right.

THE COURT: That gives you even a greater area to talk to us about if you can, is that not so?

THE WITNESS: Yes.

THE COURT: Very well. What have you to say, what have you noticed, if anything, during the last few months

compared with what you noticed around the time the building of the Trinity started to rent?

THE WITNESS: I have noticed an increasing number of situations on the streets which are difficult for me to testify about because it is sometimes hard to make exact statements, but one has again observations from live and that one has seen and, as I heard Mr. Fried say today, I have seen an increasing number of people who are drinking on the streets out of paper bags. I have seen an increasing number of children, young people who are involved with other children in the neighborhood, badgering them, talking to them.

My daughter reports to me things about walking to and from school, etc. Is that what you are wanting me to say?

Q Yes, it is, Mr. Lumbard.

THE COURT: How does that condition differ from what it was in '69 to '70?

THE WITNESS: It has -- these problems are increased further from the 60's, when we first committed ourselves to this building. I have no statistical data of my own personal knowledge in that regard and that is why I am responing as I am.

THE COURT: There are certain areas --

THE WITNESS: I have not collected such material nor do I have it.

THE COURT: Sir, there are certain area of testimony which are allowed without statistics. The taste of the public for music, for what is pornographic, for what should be avoided, there are very few statistics on that. Witnesses are called and they are asked their familiarity with the subject and then they give it based on what they have observed and that is all you are being asked.

THE WITNESS: All right.

THE COURT: May I point out that you have, I think, just touched on one or two items. Is that your answer or are there other conditions that you wish to alert the Court to that I do not know, that is up to you.

THE WITNESS: If I am allowed to express a conclusion in that regard --

THE COURT: No, just what you see. Just what you see. You told us about children, you told us about drunkards.

THE WITNESS: Yes.

THE COURT: What else?

THE WITNESS: In 1970 the incidence of children from the school -- leaving and coming to the school, but principally leaving in the afternoon had become such a problem, there have been so many muggings and harassments --

MR. LAND: Objection unless this man has personal knowledge.

THE COURT: Objection sustained. So many muggings is excluded.

THE WITNESS: The school had to hire a guard who now stands at the entrance to the school.

THE COURT: Now, that is something you can testify about, all right. Yes.

THE WITNESS: I thought the question went to why the guard was hired, but in any event it is a fact that a guard has been hired since 1970 or so and we have had to commence a night patrol within the school with a uniformed guard and a police dog as a result of a series of breakings into the school premises and a lot of thefts.

The school has repeatedly, of late, had painted all over the various derogatory signs about how Trinity opposes public housing. That is done on a daily basis practically or the signs are there all the time.

There was in the summer of 1972 a very large demonstration in front of the school that I personally witnessed. That demonstration concerned Site 30. There were, I would say, 100, 150 people there. There were a series of speakers. There were a series of karate demonstrators who, as I was standing in 90th Street, sort of gave me the chop-chop motions that go with karate. I was there as the Trinity representative and the only member of the board.

There were on that occasion a substantial numbe of people who picketed the school. I got to the school that day because I had been called by one of the school coaches, a Mr. Vasari, who was running the Trinity summer school, and he said that the pickets had told him that he must immediately close the school.

MR. LAND: I object to hearsay, your Honor.

THE COURT: Objection sustained. That part I will have to strike. Go on.

A (Continuing) I went up there, the school was indeed closed early that day and the children who were attending the summer school were sent home.

I was told by various people in the grouping there that Trinity would regret opposing public housing on Site 30. This was not only the thrust of personal conversation to me, but speeches were given with an electric amplification there that day.

There were a number of policemen in view.

Since that occasion on a number of times in walking, the neighborhood people have come up to me and said in rather strong language various things to me about myself and Trinity School and public housing and what we are or are not for or against. These make walking in the neighborhood unpleasant, I am able to say that.

There has been to our observation, to my observation a general deterioration in the neighborhood and it is a much less pleasant place than it used to be.

MR. LAND: Your Honor, the phrase "general deterioration" is so unspecific and a conclusion that I move to strike that.

THE COURT: No, I will let it stand subject to renewal of the motion after you are through with your cross examination.

All right.

BY MR. MORRIS:

Q Mr. Lumbard, I show you this statement of the Board of Trustees of the Trinity School in 1967-68 and ask if this was the Board of Trustees at the time the Trinity contract was entered into?

A Yes, this is the Board that voted the agreement.

MR. MORRIS: I offer it in evidence.

THE COURT: Any objection?

MR. LAND: Your Honor, we object to the introduction of this statement because we see no relevance whatsoever as to who the individual board members were to this litigation, whether Mr. Jones or Mr. Smith was a board member will not control the outcome of this litigation.

THE COURT: What is the purpose of the offer?

MR. MORRIS: To show the individuals who were responsible for the approval of the Trinity School entering into this agreement. They were the individuals who were responsible. They were the individuals who passed upon the matter and they were the ones who finally approved the Trinity School becoming part of the project.

THE COURT: Received in evidence. Objection overruled.

xx (Plaintiff's Exhibit 33 received in evidence.)

MR. LAND: Your Honor, Mr. Morris' characterization that these people approved it, I wish to strike that because there is no evidence that each and every one of these people had any input into the contract in question.

MR. MORRIS: I will ask the witness that fully and establish it through the witness.

THE COURT: Go ahead.

Q Mr. Lumbard, would you look at Plaintiff's Exhibit 33 and tell me whether the people whose names appear on that exhibit, as members of the Board of Directors, participated actively and voted in favor of Trinity School making its commitment to this project?

MR. LAND: Your Honor, I would think that there would be a written record of the Trinity Board of Directors meeting which would more adequately contain the answer to this

question.

THE COURT: Therefore you object?

MR. LAND: Yes, your Honor.

THE COURT: Objection overruled. Can you answer it?

THE WITNESS: Yes, I can.

THE COURT: What is your answer?

THE WITNESS: Looking at this list, all of them participated with the exception of several who were ill at the time.

THE COURT: Who are the several?

THE WITNESS: Robert Carleton, C-a-r-l-e-t-o-n, Clarence Michalis, Sterling Halstead, and the remainder actively participated in the final vote and also over the years preceding and indeed one of them, I think, is of direct relevance to this.

Q Would you tell us the names of those who did actually participate?

A Well, everybody participated.

Q Would you give us their names?

A Everybody other than those three participated.

Q Would you give us the names, please.

THE COURT: What is the purpose of it. It is in evidence?

MR. MORRIS: All right.

THE COURT: Isn't it?

MR. MORRIS: Yes, it is in evidence.

THE COURT: All right, let's go to something else. You do not have to answer it. It is before me, it is in evidence.

MR. MORRIS: May I have a moment, your Honor?

THE COURT: Of course you may.

(Pause)

MR. MORRIS: That is all, your Honor.

THE COURT: Short recess, gentlemen, and we will take up cross examination.

(Recess)

THE COURT: Mr. McLoughlin's request that he be excused at 4:30 is granted. He has an important item to supervise over in his office and so we will stop at 4:30 today.

MR. MC LOUGHLIN: Thank you, your Honor.

THE COURT: All right, cross examination.

CROSS EXAMINATION

BY MR. LAND:

Q Mr. Lumbard, part of your testimony dealt with a change of the 20 to 80 percent ratio of low income to moderate income units in the Trinity housing project to 30/70 percent. Is it my impression on your direct testimony that this change

occurred after the project was commenced and the agreements were entered into, but for some reason the City changed its regulations and they said in effect to Trinity, look, you have got to go along with this increase of low income people, and that Trinity went along with it perhaps somewhat reluctantly. Is that essentially what your testimony is on that subject?

A No.

Q Would you tell us, then, when did this change of the 20 to 80 percent to 30 to 70 percent occur?

A It occurred prior to execution of any final agreements and it was a request of the City. We were not told in a mandatory tone it was this or else, and we got into the hearsay problem. I could say a lot about it, but I did not participate myself in direct conversations with Government officials about it.

My conversations were with our counsel.

Q Is it your testimony then that the 30 percent allocation of the units to low income tenants was a part of the contract that Trinity executed with the City, that contract being Plaintiff's Exhibit 14?

A No, I didn't say that either.

Q Do you know whether or not that is contained in the contract?

A Whether the 70/30 formula?

Q Yes.

A I do not recall at the present time whether or not it is.

THE COURT: Can you enlighten us on it? You gentlemen, have you examined it thorough enough to give the Court enlightenment?

MR. MORRIS: It does not contain any provision.

MR. LAND: I will read the contract, your Honor, in view of Mr. Morris' statement.

THE COURT: Not the contract, you mean a certain portion thereof.

MR. LAND: I read from Page 14 of Plaintiff's Exhibit 14. "It is hereby agreed that 30 percent of the apartments in the apartment building to be constructed will be allocated to families of lower income than the income of families occupying the remainder of apartments by any one or more of the following means determined by HDA: A. The leased housing program of New York City Housing Authority; B. The capital grant assistance program of the New York City Housing Finance Agency; C. Federal rent supplement program; or D. Such other means."

MR. MORRIS: I was mistaken, your Honor. I did not realize that was included.

next page out of order

THE COURT: You certainly were. All right, Mr. Land, you scored on that one.

Q Mr. Lumbard, you are aware of the contention by the plaintiffs Trinity School and Trinity Housing Corporation that they contend that there was a breach of contract with the City; is that correct?

A That is correct.

Q However, that breach of contract, as I now understand, has nothing whatsoever to do with the ratio of low income people to reside in Trinity housing project, the difference between the 20/80 percent or 30/70 percent; is that correct?

A That is correct, it never did.

Q It never did?

A It never did.

MR. LAND: Your Honor, I move to strike all the testimony dealing with this business about 20/80; 30/70 since it is absolutely irrelevant to the contentions by the plaintiff.

MR. MORRIS: Your Honor, it is completely relevant because it establishes that the ratio which was established in the Urban Renewal Plan for the entire area included a 70/30 ratio and that the Trinity School project was no exception to that. That also included a 70/30 ratio.

THE COURT: I will let it stand. Motion denied.

Q Mr. Lumbard, are you familiar with the terms of this contract, Plaintiff's Exhibit 14?

A Familiar?

Q Conversant with them?

A I do not have them memorized in my head. I have read the document in the past.

Q When you read it and have you read it thoroughly?

A I read it thoroughly at the time of the agreement. I have not read it thoroughly for several years.

Q This document, I would say, is easily one-inch thick and as a lawyer I am sure that in reading such a document you would pour over it rather meticulously because I am sure within this document there are many sections which refer to and include other sections and there could be no competent understanding of the document unless there was almost a religious study of this tome. Did you perform such a religious study?

A I perform very few religious studies and I do not adopt any of those words that you are talking about. I really do not know what you mean.

Q For how many hours did you -- in total -- have you read this document, Plaintiff's Exhibit 14?

A How many?

ake 2:15pm



Q How many hours would you estimate you spent reading this prior to the time it was executed?

A It was in draft form, in typed form when I first saw it. It was then in, I believe, galley type form. By type I mean printers type and I read it in each of those stages and I am sure I probably read the final printed copy as well, but I do not recall how many hours that would be in total.

Q Would you say you just took it home one night while you read it watching television having a beer and spent an hour or two with it or that I took tis to my office and for a period of perhaps 30 hours in total I reviewed this document?

Which of those two or a combination of those two or a median would be appropriate?

A None of those would be appropriate.

Q More than 30 hours of work on this?

A Less.

Q Twenty hours?

A Less.

Q Ten hours?

A I would say less than ten.

Q Eight hours?

A I really don't recall. I read it carefully

at the time for my purposes. I do not simply recall the number of hours I read it.

Q Your purposes were for the purpose of comprehension and knowledge, is that correct?

A Yes.

Q Mr. Lumbard, could you indicate to us what is the provision of this contract which you contend the City has breached?

A Which I contend or Trinity contends?

Q Trinity contends. You are the president of Trinity. Please show us.

A I am not the president of Trinity School. I am president of the housing company.

Q Is not this document entered into by the Housing Company?

A Well, it says the City of New York and Trinity Episcopal School Corporation on the cover, right?

Q Yes. That would include the organization of which you are president?

A Oh, if you are saying includes, yes.

Q Okay.

A If you are saying the Housing Company is a subsidiary of the school and I am president of the Housing

Company, that is accurate.

Q The Housing Company claims a breach of contract, does it not?

A Yes, the Housing Company has and so has the school.

Q Could you show me in the contract those terms which you contend have been breached?

A Our contention is that the West Side Urban --

Q Excuse me.

A May I answer?

Q You may get to that later, but can you point out those provisions in the contract which are breached?

A Well, I have no read the document within the last several weeks. May I keep it?

Q Sure.

A To determine some kind of familiarity by clause which we would so claim.

THE COURT: That is all you have to say. Next question. So your answer is you cannot do it at this moment, is that right?

THE WITNESS: Yes, in that fashion that he is getting at.

Q Will you be so kind --

MR. LAND: Here is why I have to ask this

question, I am sure your Honor is aware that there is nothing in the pleadings or in any of the motion papers by plaintiffs which spell out a particular clause or phrase in the contract which they say that language has been violated by the City. There is this general statement "breach of contract".

I would like to get down in there and see what we are really dealing with.

This is a thick document. Perhaps the Court would ask Mr. Lumbard as the president of one of the plaintiffs to examine the document and come to court and tell us exactly what provisions of the contract were breached so that we may then be prepared for our defense.

THE COURT: I see nothing wrong with that. What do you say, Mr. Morris?

MR.MORRIS: That is acceptable, your Honor.

THE COURT: Certainly. Mr. Lumbard, would you undertake to do that. It is not exactly a labor of love, I am sure, it becomes a labor of duty, an obligation as a sworn witness and you have no alternative, so will you please undertake to do that and come back here and testify?

THE WITNESS: Yes, your Honor. I had hoped

so that he had several in process at the moment.



to complete my testimony here.

THE COURT: So did I, but I didn't know he was going to ask it and he has a right to ask it. We cannot do a thing about it.

THE WITNESS: I understand that. I will do it, of course. I merely am expressing an unhappiness at having to come back and not being able to finish my testimony.

THE COURT: Well, we look forward to the pleasure of seeing you again. All right. Would you be content with a recital by counsel. I am not asking you to, but that seems to be the equivalent of a stated position. We maintain and so forth and if he could add that he showed that statement to this witness and that this witness has signed it and has given his approval, would that satisfy? You don't have to accept it, but it is a suggestion.

MR. LAND: I think under the circumstances that would be proper. This is the problem: That within this contract there is a phrase which the City contends and so does the federal government which alleviates the problem which plaintiffs contend, that problem being that after this contract was entered into there were modifications of the Urban Renewal plan.

A I have no way of knowing.



those modifications, essentially they say, result in the breach of contract.

THE COURT: In other words, you not only want the witness to point out to you the particular language of the contract in evidence which he maintains is involved in this suit and what this suit is all about, but you would like to pursue that further by getting his understanding of certain terminology of that contract.

MR. LAND: Maybe we can solve the problem right now.

MR. MORRIS: Your Honor, may I be heard with respect to that?

THE COURT: Wait a minute, he is about to solve it now. Give him a chance.

MR. LAND: I can ~~sold~~ solve it right now. The City's contract with the two Trinity's incorporated by reference what was known as the fourth amendment of the Urban Renewal plan. That is included as an exhibit to the contract.

On page 28 of what is denominated as the West Side Urban Renewal area project NYR-43, the City of New York Housing and Redevelopment Board amended Urban Renewal plan fourth revision, on page 28 of that fourth revision, paragraph F reads as follows:

"This Urban Renewal plan may be modified at any time by the City of New York provided that if modified after the disposition of any land in the project area, such modification must be consented to in writing by the purchaser or leasee or their successors in interest of the specific property covered by the modification. This shall not be construed to require the consent of the purchaser or leasee or their successors in interest of any other parcel in the project area."

It will be our contention that based upon this language, which is incorporated by reference in this contract and which Mr. Lumbard says he read over for the purpose of comprehension and knowledge that this language would indicate, I think to a reasonable mind, that the City of New York could modify the plan requiring the consent only of the owner or leasee of that particular parcel of land that was subject to the change or subject to the modification.

In other words, if on Site 24, which Trinity owns, after the execution of this contract there was to be a change in what was designated for Site 24, then the consent of the Trinity School and Housing Corporation would be required.

However, if there is a change on some other

THE COURT: Mr. Land, I am sorry, but you

parcel of land, some other site, then no consent of Trinity is required because the contract says "This shall not be required -- strike that -- this shall not be construed to require the consent of the purchaser or leasee or their successors in interest of any other parcel in the project area."

Now, if Mr. Morris is willing to concede that this language governs this case, then their contention that there has been a breach of contract by reason of changes in parcels other than Parcel 24, which is the Trinity parcel, then we don't have to continue with Mr. Lumbard's examination of this document.

If they would so concede that, that would solve one of the issues in this case.

MR. MORRIS: Your Honor, first of all, counsel is arguing an issue of law which is one of the issues that will be before this Court for eventual determination and it is one of the basic issues in the litigation.

When your Honor at the beginning requested that I set forth the issues that were involved in the case, that was one of four and yet counsel takes the position that he wants to cross-examine the witness as to what the legal effect is of a particular clause.

First of all, we concede that that clause is

MR. LAND: Well, if it does and we can



in the agreement. There is no question about it. IT is in evidence and there is no doubt about it. I don't know what this witness could testify to with respect to it.

Secondly, our argument and our contention that there has been a breach of contract by the City does not relate to this clause at all. It relates to the fact that an agreement was made, and this is the agreement, to have the Trinity Housing Corporation as the sponsor of this project under the terms of the Urban Renewal plan. The Urban Renewal plan specifically provides that Sites 30 and Site 4 are for middle income housing. That we claim is binding upon the City.

However, they breached that provision and we claim that because of the breach of that provision the City is liable in the action which we have brought to compel them to put the contract back to the basis upon which it was originally set.

This consent provision, which is being read here, has nothing to do with that argument. The argument relates to the basic terms that the revelopment of the area will include the terms of the Urban Renewal plan and that has been violated and there has been no approval and no request for a change in the Urban Renewal

THE COURT: Nothing else.

Q And at the same time as the Karate demonstra-

plan. They just went ahead and did it and that breaches our contract.

That is an issue of law and not an issue upon which we have appropriate subject for cross-examination and I respectfully object to this line of inquiry.

THE COURT: It has been considerably diminished, Mr. Land. I don't see what you are going to gain by having the witness return after a study of the document when that position can be stated without equivocation, without any ambiguity by counsel representing the plaintiff.

It is a question of law really and not for this witness to resolve, but unhappily for me to determine. So I don't see the purpose of it really in the light of what has ensued since you stated your position.

MR. LAND: Maybe this would be a proper suggestion.

THE COURT: Yes.

MR. LAND: To have Mr. Morris indicate to us specifically those clauses in the contract which were breached.

THE COURT: He nodded his head when you first mentioned it and I take it you are ready to do that, Mr. Morris?

A I recognized none of them and I recognize

At that particular moment I was standing [illegible]

MR. MORRIS: Yes, your Honor.

MR. LAND: Once we see what those clauses are we may come to the conclusion that Mr. Lumbard's testimony about those clauses would be irrelevant so he won't have to come back.

On the other hand, if those particular clauses relate to or bear upon the representations which he asserts were made to him orally, then, of course, it may be necessary to bring him back.

THE COURT: All right. With that understanding we will not have Mr. Lumbard return unless between now and the completion of cross-examination it becomes necessary and if it becomes necessary as a result of discussion between counsel, including Mr. Morris, of course, if Mr. Lumbard has to return, he will have to return, that is all.

All right.

Q Mr. Lumbard, you indicated in your direct testimony that it took approximately 18 months to build the project on Site 24, is that correct?

A Roughly.

Q When was construction commenced, do you recall?

A The spring of '68 and completion in December

of '69.

Q In December of 1969 it was completed, is that correct?

A Substantially completed.

Q Was it useable in 1969, December of '69 ?

A Partially. There were a lot of internal things that had to be finished.

Q When was the site fully operational in terms of filling it up with tenants and having the gymnasium finished, your schoolrooms finished, everything else, when was the first date that everything was done?

A Literally everything? The summer of 1970 ready relaly for the opening of school in September 1970.

Q September 1970, okay.

A There was partial occupancy in varying stages up until that time.

Q Would it be fair to say, then, that what type of staff you would need to operate the building in terms of janitors, maintenance personnel, agents to show people houses and this kind of thing, the number of people required would not really be fully appreciated until the building was actually put up and you say exactly what you had once you got everybody in there and how the

thing functions as sort of a living being, this huge complex, is that correct?

A No.

Q You would know before then exactly what you needed?

A Yes. Indeed as far as the housing --

THE COURT: Please, that is all. Because you are a lawyer doesn't give you the right to add on anything. Next question.

Q You have testified that this particular site would have 30 percent low income persons, is that correct?

A Site 24?

Q Yes.

A Yes.

Q 30 percent low income units?

A Yes.

Q Was there -- were all of these 30 percent low income units fully occupied prior to September 1970?

A I don't recall.

Q Would it be fair to say they probably were not? You started filling them up as the project became completed and not until the summer or fall of 1970, that you really had all your low income people there?

A I think they probably were there earlier, but I don't recall the exact dates. It would be possible to say all 30 percent were full.

Q Have you ever operated any other Mitchell-Lama project or housing project in which 30 percent of the units were for low income persons?

A Personally?

Q Yes.

A No.

Q Has anyone else whose name appears on Plaintiffs' Exhibit 33? Do you know of your personal knowledge whether any of these people actually ran a Mitchell-Lama or other housing project where 30 percent of the people were low income tenants?

A Yes.

Q Who.

A Mr. Lansdale, John Lansdale was in the real estate business and I have forgotten the firm now that he was with, I think it was Douglas Elliman or some such.

At or about this time I have the impression that some representatives who were on the board who were formerly involved with the Episcopal church had had a considerable history of housing experience and that in

one way or another the church was a sponsor involved in a whole series of housing situations and that particularly involved Bishop Boynton.

At that time Charles Tenney, now a Judge of this court, was then corporation counsel and he gave us a lot of input in terms of how these projects worked and he told us, in fact, on a number of occasions that we could rely on what the City told us and he gave us a great series of opinions, in fact, about a number of things in this regard.

The Reverend John Mulligan is the director of the Seamen's Church Institute, which is down in lower Manhattan, and in some way that is not now clear to me, he had housing experience.

Wallis Dunckel was the president of the Bankers Trust Company. He had a substantial amoung of experience in terms of financing these projects and he had people on his staff who could give us economic projections and rules of thumb about housing and construction and mortgage loans, et cetera.

And Glover Johnson who was at that time president and the principal figure in our board had just completed building one, as I told you, up in New Rochelle and I think immediately commenced upon doing another one

so that he had several in process at the moment.

Q Okay, good.

In other words, it is pretty fair to conclude that the people who would act on Trinity's behalf were not let us say babes in the woods when it comes to housing?

A I don't know what you mean by babes in the woods, but I don't regard any of them as a babe in the wood.

Q They are men of considerable knowledge and experience with the affairs of the City of New York and as to those people you mentioned men with knowledge and experience in the field of housing, including public housing?

A Public housing I am not so sure other than Judge Tenney. I am not aware of any of the others being involved in public housing. It is possible.

Q Have you ever met any of the low income tenants at Trinity School?

A The Trinity House?

Q Trinity House.

A Yes, I interviewed a number of them before they entered the house.

Q Did any of them have police records?

as middle income?



A I have no way of knowing.

Q Did any of them tell you they had police records?

A Did they tell me?

Q Yes.

A No, I never remember a tenant telling me they had a police record.

Q Did you ever ask any of them if they had police records?

A I did not personally. There was one incident involving a tenant where that became an issue.

Q Did any of these people relate to you why this particular individual was a low income person through no fault of his own, in other words, a lack of education, family problems, maybe physical injury, lack of mental capacity or you know explain to you why I am a low income person, yet I am deserving of residing in Trinity House?

A I don't remember anyone saying that to me.

Q Explaining why they were low income.

Would you say it is a fair statement that persons of low income, as opposed to persons of high income or middle income, which reside at the Trinity House are generally persons with less educational

experience, with a great record of unemployment, with a greater rate of the commission of crime and the conviction for crime, a greater rate of social problems than those persons who are in middle income?

A Well, there are a lot of questions involved in that. I have no knowledge as to some of those elements if I remember them all in the question.

It of course necessarily comes to your attention about the phrase "social problems" if you are meaning what I mean because if you say, do the low income people have more social problems, well, if they are there in our house and on welfare, you might assume that that would be the case. I have no knowledge about their employment history or some of the other things that you mentioned nor indded about the rest of the tenants in the house.

Q What I am getting at, Mr. Lumbard, is not if you take a group of low income people and put them into Trinity House, are you not, of necessity, bringing right to Trinity House the very problems which make those people low income people?

A I don't know that to be the case.

Q In other words, if an individual is a low income person and is currently unemployed and by reason

you may rely upon the plan was not intended to mean that



of that unemployment --

THE COURT: Mr. Land, I am sorry, but you have got a right to ask those questions, but certainly your objection is heretofore interposed when he was giving testimony on direct that he wasn't in a position to say this, that or the other applies to you right now. He has frankly said he didn't see anything there. He didn't even know about the middle class tenants. The tenant who needed help, he knew nothing about them so what good is his testimony? Mt is worthless to me.

MR. LAND: Judge --

THE COURT: Get a hold of somebody who had that as a problem and studied it and can give me some testimony. Otherwise this is worthless. Why waste time?

MR. LAND: Judge, this is why I had to go into this. We made a motion to strike when he testified about the deteriorating conditions which he witnesses and he spoke of increasing situations on the street. I made a motion to strike that on the grounds that the man was not competent to testify on that. The motion was denied.

THE COURT: You think that this attempt of yours just now gives me an answer as to whether I should

amateurish in form and substance and so I interpreted

strike or not, is that what you are saying?

MR. LAND: Well, if it does and we can strike it --

THE COURT: Certainly it does not. The testimony remains. On that ground there is nothing before me to warrant striking it and the testimony of this witness on that score stands and by that score I mean what he had to say as to his observations on the street.

MR. LAND: Your Honor, I will perhaps make an offer of proof as to what I would try to establish through this witness if I may.

THE COURT: That is something else again. You don't have to. All I am ruling is that I see no sense in asking him questions when he has no familiarity with the essentials which were encompassed in an answer, a creditable answer to your question, don't you see. He didn't make any inquiry with regard to criminal records, what put them on relief, was it ignorance, was it fate that had dealt one blow after another that had reduced that person to an economic condition that cries out aloud for a helping hand, what is it? He doesn't know and that is what I was stopping your questioning about.

he meant you may rely upon the fact that we have an

MR. LAND: Okay.

THE COURT: Nothing else.

MR. LAND: Let me give you my offer of proof --

THE COURT: No, you just want to give it to me because you want to give it to me but I don't want to take it until it becomes necessary. I am just ruling on one point and that is you are to stop asking questions that do not -- that are not predicated upon knowledge because it is meaningless to me. It is a waste of time.

Now you can go to something else.

MR. LAND: All right.

Q Mr. Lumbard, you used a phrase in your direct testimony that you saw increasing situations on the street.

Do you know of your personal knowledge whether such situations were, in fact, done by persons of low income?

THE COURT: Yes or no.

A No.

THE COURT: Next question.

Q You mentioned a rather interesting incident in which you were caught up in the center of a Karate demonstration.

question that we are addressing ourselves to now, Mr.

A Right.

Q And at the same time as the Karate demonstration was going on apparently there was some demonstration going on vocally generating the position of Trinity School in respect of the current controversy, is that correct?

A That's correct.

Q Do you know whether or not the Karate demonstration was a part of the vocal demonstration?

A I will tell you what I saw.

Q You can tell me that in a minute, but do you know whether the Karate demonstration, those people taking part in Karate were actually part of the vocal demonstration taken by the people opposed to Trinity's position?

A That was my belief.

Q What is the basis of that belief?

A My observation.

Q Do you know whether in fact the Karate people in fact may have been employees of Trinity School who were giving a Karate demonstration and just happened to get caught up in this other thing that came down the street?

A I know as a fact that was not the case.

you first met him up to this very moment of your

Q You know the people who were doing the Karate demonstration?

A I recognized none of them and I recognize all the employees of Trinity School.

Q They weren't employed by Trinity for the purpose of coming down to give a Karate demonstration?

A That's correct.

Q You are sure of that?

A Yes.

Q You believe based upon what you saw that the Karate people were a part of the vocal demonstration?

A Yes.

Q What did you see which made you form that belief?

A The entrance to the new school is on 90th Street, the school is on the north side. When Site 30 was cleared that meant Site 30 is directly across from the entrance to the new school building.

This demonstration was located on both the sidewalk and the Karate demonstrators were at first in the premises of Site 30.

There also was a crowd both in the premises of Site 30 and on the sidewalk. The microphone was right near the property line where there is a fence and it was

and ask him a direct question? In this context [illegible]

facing the school and they were talking right at the school, which is immediately across the street.

At that particular moment I was standing in the middle of the street, that was sort of halfway through the whole thing, the Karate people had been giving this demonstration inside and people who were using the microphone were referring to them and talking about them and this is a gesture of solidarity and support and so they were referring to each other and they were doing this on cue from the MC, I took that to be a related matter.

Q Were you hit with a blow?

A No.

Q Did someone say, I am going to hit you with a Karate chop?

A Did someone say that, no.

Q Did the Karate people say, here I am, you had better duck?

A I don't recall anyone saying that.

Q They stood right next to you and made the gestures?

A Right.

Q The pickets, were they stopping people from going into and from Trinity School or the housing [illegible]

A On that particular occasion?

Q Yes.

A There were some who tried to keep the 90th Street entrance to the new school blocked off a little bit. I tried to get in at one point to get to school to get the telephone and I forced my way in.

Q Were you hurt when you forced your way in?

A Not in the least.

Q You are a pretty big guy. Maybe some of these guys you just tossed out of the way.

A I don't believe I tossed anybody out of the way.

Q You pushed some out of the way?

A I pushed some people.

Q They didn't push you back?

A A little.

Q They didn't hurt you?

A No.

Q Were the people giving -- strike that, please.

I take it the tenor of the oral demonstration was that people were protesting Trinity's opposition to the conversion of Site 30 to a low income housing project, is that correct?

A No. I got -- that was mentioned many times.

Q During the demonstration?

A And I was in and out and I did not -- I was not there at the very beginning so I did not see the whole thing, but it lasted some time and there were at least ten different speakers that I heard. I cannot remember their names. I remember one was named Bueler Sanders, that is a large woman. She is the only name I now recall.

I remember several of the people who spoke by sight. I remember things they said, if you wish me to go into that, but the thrust seemed to me after a while to be much more at the capitalistic system, at banks, at the Rockefellers, at the Episcopal diocese because there was a leader there from a group engaged in a squatting thing right across from the cathedral of St. John the Divine which is, I think 111th Street, an Episcopal leader of that squatting efforts. I don't recall his name and it seemed to me after a while to be more of an economic thing in general, and the need for housing on the whole West Side more than St. [illegible].

Q Okay.

A We seemed to be the immediate focal point for that occasion.

Q It was because your building was built and

the others weren't and you had yours and they were complaining about it?

A Is that a question or a speech?

Q That was sort of, it appears that the other sites weren't constructed yet and yours was and maybe these people were saying, look, you got yours first, we want ours now, something to that effect.

A I don't recall that.

Q Okay.

During the course of your direct testimony I believe you stated that during the course of your fall 1963 meeting with Mr. Milton Hollen, Mr. Hollen told you that and I quote your words "You could rely on the plan."

Is that your testimony of what Mr. Hollen said to you, that you could rely on the plan?

A Are you talking about the fall 1963 meeting or the spring of 1964 meeting?

Q I have it down here in my notes as the fall of 1963 meeting.

A I met with him in the fall and he did make that general statement, but that was before Trinity had even filed the application so I took that as just conversation

ojw Lumbard-cross 1063

The conversation that seemed to me to be significant was after we had filed the letter of December 18, 1963, had formally expresed an interest and we had a meeting with the full board in the office that I told you about.

Q That was the one in the spring of '64?

A Yes.

Q Mr. Mollen was present at that time?

A The president or chairman.

Q Present.

A Yes.

Q Did he at that meeting say to you, you may rely upon the plan?

A In substance. I cannot quote him, but in substance that is definitely what he said.

Q What plan was he referring to?

A He was referring to these big charts that were then on easels in the room and had these different colored descriptions of different categories of housing. It was a map of the West Side Urban Renewal area.

Q When he said, you can rely upon the plan, was he meaning, you can rely upon the fact that we have a plan and the plan has certain programs --

ojw Lumbard-cross 1080

THE COURT: There is no objection by plaintiff. The Court interposes an objection.

MR. MORRIS: I object, your Honor.

THE COURT: The objection is sustained. Next question.

MR. LAND: Your Honor, we have testimony --

THE COURT: Next question. You have been wasting time, sir.

Q Mr. Lumbard, when Mr. Mollen referred to the plan, was he speaking --

THE COURT: How does he know what Mr. Mollen had in mind?

MR. LAND: Maybe he explained it to him.

THE COURT: The objection is sustained. I don't want any more cross-examination of that quality, the last ten or fifteen minutes. It doesn't help me at all.

You may sound smart, but I don't recall it so. Please don't offend the Court.

Q Mr. Lumbard, in the spring of 1964 do you know what the site designation was for Site 30 of the West Side Urban Renewal area?

THE COURT: Yes or no, do you know?

A Yes.

THE COURT: Next question.

Q What was that designation?

A Middle income housing to be a Mitchell-Lamm I was told.

Q Fine.

I show you Plaintiffs' Exhibit 14-A, which is a map, and on that map -- can the Court see this --

THE COURT: Don't worry about me. You go ahead with your question.

Q I point with my pen to Site 24, do you see that, Mr. Lumbard? You can put it down here.

A Right.

Q According to this map, Site 30 is south of -- across the street from Site 24.

A Right.

Q I also show you Site 36, which is across the street from Site 24 and two blocks down, do you see Site 36?

A Yes.

Q Do you know what the designation, the use designation of Site 36 was in the spring of 1964?

A Middle income. That is what this chart says.

Q In the spring of '64 this was designated

2 through 6 on a document that was a sort of proposal Mr.



as middle income?

A That was my impression.

MR. LAND: Mr. Morris, we will establish through further proof, if need be, that in the spring of 1964 Site 36 was then desginated as low income housing.

Do you know that to be a fact and will you so represent? Site 36.

THE WITNESS: May I specify to that?

MR. LAND: In a minute, please.

(Pause)

Q You were going to say something about Site 36 and you may do so now.

A I am only telling you that I recall that area as a middle income site on the chart that I saw that day in Hollen's office. I don't know what else you are talking about when you say you will state as a fact, I cannot cope with that. I am testifying that that is what I saw when I looked at that chart.

Q Site 36 in particular?

A Site 36.

Q Mr. Lumbard, during the course of your discussions on behalf of Trinity School and Trinity Real Estate Corporation with officials of the City --

minute. Won't you please continue.



A With who?

Q With officials of the City of New York and prior to the time you executed the contract, did any of them tell to you that notwithstanding the designated usage of particular sites, that those uses may be changed in the future?

A Never, not once.

MR. LAND: May I have a moment, if your Honor please?

THE COURT: Yes, sir.

(Pause)

MR. LAND: Your Honor, we have a problem in proof right now on which the Court made an earlier ruling. I would like to explain the problem and maybe the Court would reconsider its ruling. This is the problem: We have testimony that Mr. Mollen said that you can rely upon the plan.

I think if we develop that it may turn out to mean that you can rely upon the fact that we have an Urban Renewal plan and we have established what we think we can do with it, but it won't be completed for many years. During the course of completion, we may be required to designate or change the designation of the sites and that the statement to Mr. Lumbard was

A Well, I am unable at this time to give you the

you may rely upon the plan was not intended to mean that you may rely upon the current designations in the plan you now see because there may be changes required and I would like to go into that just very briefly with Mr. Lumbard to see whether he understood the phrase "rely upon theplan" meant one thing or the other based upon the sum total of his conferences on that occasion.

THE COURT: I never by word or sign indicated that you would be prohibited from doing that. I addressed myself to the unfounded comments by you and the waste of time. It has nothing at all to do with what you have just ~~spoen~~ about as you should know. You spent an inordinate amount of time with regard to the parade and all that sort of thing, way beyond the necessity and its contribution to the overall picture and the enlightenment of the judge with regard to the problems here are so miniscule as not to be worthy of the time that you devoted. You saw the Court's annoyance with it and yet you continued.

Then you started to ask questions dealing with what was in Mr. Hollen's mind and that certainly is well recognized by ordinary law students as not being the way to develop that point and it astonished me,

sir, that you should resort to putting a question so amateurish in form and substance and so I interpreted to say that [illegible] would not allow because it was offensive that you should expect an answer to a question that incorporated what was in someone else's mind.

That is the only thing that I have said. I stand on it and I repeat it and my displeasure is reiterated.

Now, I don't see what that has a thing to do with what you have just announced. Now go ahead and develop it if you can. But do it by legal proof recognized by law as evidence.

MR. LAND: May I apologize to the Court if I made a misstatement which I did not intend to make and if I got my words twisted up.

THE COURT: All right, sir.

Q Mr. Lumbard, referring again to the meeting in the spring of 1964 and your testimony, as I recall it, that Mr. Mollen said to you, you could rely upon the plan, is that what he said to you on that occasion?

A In substance, yes, sir.

Q Did Mr. Mollen say to you whether reliance upon the plan meant that you could rely upon the current site designation and their uses as shown on the plan in

THE COURT: "I do not" is an answer. Next question.



existence on that date or did he indicate to you that he meant you may rely upon the fact that we have an Urban Renewal plan which will go forward for the next ten or twelve years but there is no guarantee that a designated use for a particular site will remain fixed?

MR. MORRIS: I will object to that, your Honor, on the ground that he has asked two different questions as to whether Mr. Mollen said one thing or another. Let him ask the questions one by one so that the witness is not confused by the long question.

THE COURT: Are you confused by the question?

THE WITNESS: Yes.

THE COURT: Are you?

THE WITNESS: Yes.

THE COURT: All right, divide it into two sections, will you?

Let's take the first part. Will you read the first part, Mr. Court Reporter. Maybe we can get at it faster that way?

(Record read)

THE COURT: Let's stop there. Can you answer that?

THE WITNESS: In substance he said we could rely.

THE COURT: Now complete the all-embracing question that we are addressing ourselves to now, Mr. Court Reporter. What is the remainder of that question?

(Record read)

THE WITNESS: I do not recall any such discussion.

THE COURT: When you say do not recall, that means it might have taken place? You understand that, that is what you meant by "I do not recall"? Can you give an unqualified denial that any such thing took place?

THE WITNESS: Yes.

THE COURT: Then say so.

THE WITNESS: I do not -- it is not my recollection that any such thing was said.

THE COURT: Your recollection means that it might have been said, but you do not recall it. Which is it?

THE WITNESS: He did not say that.

THE COURT: Then say so, sir. Is that your sworn testimony?

THE WITNESS: That is my testimony, yes, sir.

THE COURT: Next question.

Let me pursue that.

Side urban renewal area both from the ppoint of the Trinity

Did he say any such thing on any occasion from the time that you entered into -- from the time you first met him up to this very moment of your testifying?

THE WITNESS: He never said it.

THE COURT: At any place, at any time, anywhere in the world, did he say anything like that to you?

THE WITNESS: No.

THE COURT: Did anybody representing Mr. Mollen ever say in essence that to you at any time or at any place?

THE WITNESS: No, sir.

THE COURT: Next question.

Q Mr. Lumbard, the contract that was signed on behalf of Trinity with the City of New York, Plaintiffs' Exhibit 14, annexes as an exhibit the fourth revision to the Urban Renewal plan, does it not?

A I do not recall offhand the number.

THE COURT: Look, Mr. Land, I was present when this witness said that he hadn't look at that for years.

MR. LAND: That is why I want to show it to him.

Did you question them on various aspects of the

THE COURT: Is it fair to spend this kind of time that way. Why don't you say something to him and ask him a direct question? In this contract there is such and such, what have you got to say on that.

May I suggest that you proceed that way.

Q In this contract annexed as an exhibit is the fourth revision of the Urban Renewal Plan. Were you aware that prior to the time you had read this contract in co-nection with your representation on behalf of Trinity School that there had been three prior -- excuse me, there had been an original plus two prior revisions of the Urban Renewal plan?

A Before I read that document, I do not believe I was.

MR. LAND: Thank you, your Honor. I think I have completed at this time.

THE COURT: Very well.

All right, further cross-examination him. I was to oblige Mr. McLoughlin, eh wants to get away at 4:30 and if you don't think you can accomplish anything in the last seven minutes, say so. Have you got a long cross-examination?

MR. GOLD: I don't think it will be too long, but I think it will be longer than seven minutes.

THE COURT: Very well. That means, Mr. Lumbard, you will have to return. I cannot do anything more about it. I tried to juggle it this way and that way, but that is the way it rolls.

We start in promptly tomorrow morning, gentlemen, I wonder whether we can't start a little earlier.

Is there anything to interfer with getting started at -- well, we cannot do it tomorrow, some other morning that we might start earlier than 10:00. I don't want to spring it on you, my way is not to do it that way. My way is to ask you can you possibly do it and will it fit in with your lives and your affairs. I don't beleive in directing until I have to. When I have to, I am not ambiguous about it.

Tomorrow morning, then, 10:00 o'clock and we have to recess because of Mr. Morris' plans to appear in another court. We will sit from 10:00 to 12:30 and Mr. Lumbard you will have to come back tomorrow morning and finish your testimony.

Announce a recess.

(Recess at 4:25 p.m.)

(Trial adjourned to April 24, 1974 at 10:00 o'clock a.m.)

## WITNESS INDEX

| Name | Direct | Cross | Redirect | Recross |
|---|---|---|---|---|
| Walter Fried (Resumed) | | | 882 | 884 |
| | | | 948 | 955 |
| Elliot Lumbard (Recalled) | 965 | 1033 | | |

## EXHIBIT INDEX

| Government | Identification | In Evidence |
|---|---|---|
| H | 909 | 911 |
| I | 916 | |

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TRINITY EPISCOPAL SCHOOL CORP., etc.

vs. 71 Civ. 4315

GEORGE ROMNEY, etc.

New York, New York
April 24, 1974
10:00 a.m.

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(Trial Continued.)

THE COURT: Good morning. Mr. Lumbard, will you please take the stand and resume your testimony under oath.

E L I O T L U M B A R D, resumes.

MR. LAND: Your Honor, one minor item of housekeeping. Yesterday Government's Exhibit I for identification, consisting of the July-August 1962 Newsletter from the City Planning Commission, has been approved by Mr. Morris and he has no objection to its introduction into evidence.

THE COURT: Will you mark it in evidence then, Mr. Clerk, please.

***** (Government's Exhibit I received in evidence.)

MR. LAND: Thank you very much.

(At this point the Court addressed a group of students.)

THE COURT: Mr. Gold, won't you please.

MR. MORRIS: I have another exhibit, which was up for discussion at prior sessions, which counsel and I have

agreed upon, and I would like to introduce that into evidence, too.

THE COURT: What has it been marked heretofore?

MR. MORRIS: It has not been marked at all. It was Amendment No. 1 to the plan and the approval of it by the Board of Estimate, which the city was unable to locate at the time we put our proof in.

THE COURT: I recall.

MR. MORRIS: The city has now located a calendar designation of that Amendment No. 1 along with a Corporation Counsel's certification as to it and that is the only record that they have of it and as far as I am concerned that is an adequate submission, so I respectfully request that that be marked in evidence.

THE COURT: Very well. That paper is received and marked in evidence.

(Plaintiffs' Exhibit 34 received in evidence.)

THE COURT: Thank you.

All right, Mr. Gold.

MR. GOLD: Your Honor, before I start with the cross examination of Mr. Lumbard, in reviewing the transcript that we have from Monday, I came across several things which I think I would like to bring to the attention of the Court.

THE COURT: Can't we do that later? That can always be done. Just a simple written statement agreed on by all parties and we will make it a part of the record.

MR. GOLD: Yes, your Honor, that was my suggestion rather than going through what Mr. Morris did the other day.

THE COURT: I so direct. It will be done the way I just indicated.

MR. GOLD: There is a second problem, your Honor. You directed on Monday, sir, that we have a response to Mr. Morris' memorandum in connection with the Otero decision by a week from last Monday. I would respectfully ask if you would permit me or permit us, I am really speaking on my own behalf, to have an additional week.

The scope of this trial and the amount of time that is available to prepare that response, working as we are every day and then back in the office, it is virtually impossible for me to be professionally responsive to that by Monday.

THE COURT: Possibly I did not make myself clear. I only want your objective response to the position taken by the plaintiff as to the applicability of that case. That is all.

I don't want you to discuss the evidence before me. Why, in other words, isn't the Otero case or why does it

not apply in all respects to the issues before me and that, sir, does not require an inordinate abount of time. If you thought that I meant that you had to illustrate your points by going into the evidence in this case, no, I did not so intend.

This is just merely a discussion of why the Otero case should or should not be adopted in principle. That is all.

MR. GOLD: I see.

THE COURT: Do you understand that now?

MR. GOLD: Yes, I think so, your Honor. I was just a little concerned because we are all pressed for time and I particularly happen to be very short of time working practically 20 hours a day.

THE COURT: Yes, but all I want is a three or four page memo, that is all.

MR. GOLD: I understand that now.

THE COURT: If you want a couple more days, that's all right, except I would like to know what the position of all the litigants is with regard to that Otero case.

MR. GOLD: I will do my very best to have it here on Monday.

In reviewing Monday's transcript, your Honor, I came across again the reference you made, sir, to items

2 through 6 on a document that was a sort of proposal Mr. Morris had put before the Court and the rest of counsel during our settlement talks and I wasn't quite sure from your remarks, sir, whether or not our acceptance, so to speak, of that meant that we agreed to items 2 through 6 because, if that is so, then I think the city has some problems of agreeing to certain of those items as I review it.

I am terribly sorry I didn't bring it up at the time, but, again, I saw it last night and I think it is important enough that I clarify or the Court clarify exactly what purpose items 2 through 6 in the record are serving.

Do I make myself clear?

THE COURT: No, I don't quite see your point. Did you read the minutes taken on that day, which I read into the record?

MR. GOLD: Yes, sir.

THE COURT: If you will consider that in conjunction with the exhibit, Court's Exhibit B, possibly it will make more sense to you.

I think you ought to reflect on it more and let's take it up for discussion at a later time.

MR. GOLD: Okay, your Honor.

THE COURT: That doesn't have to be resolved this

did you see in there a provision that provided for 30 percent



minute. Won't you please continue.

MR. DOUW: Your Honor, there is one item I wonder if I could make at this time.

THE COURT: Is it something that must be resolved right now in connection with the cross examination?

MR. DOUW: No, it can wait, your Honor.

THE COURT: Very well.

****** CROSS EXAMINATION

BY MR. GOLD:

Q Mr. Lumbard, in your testimony you gave us a pattern of involvement with the Trinity School which started, I believe, back in 1959 when one of your children began attending the school; is that correct?

A Yes, sir.

Q That followed your becoming a member of the Parents' Association at the school?

A That is correct.

Q And then its vice-president; is that correct?

A Of the Parent's Association; not of the school.

Q When exactly did you get involved in the proposed project for Site 24?

A By "exactly" what do you mean?

Q Approximately what month, what year did you get involved?

block. I do not know when that was built and St. Anne's



A Well, I am unable at this time to give you the month, but, as I said, it was in 1963.

Q In 1963 and at that time you were, if I recall, the vice-president of the Parents Association?

A Yes.

Q Is that correct?

A Yes.

Q And you became involved in this in 1963 on sort of an on-going basis. Was it once a week or every so often?

A I would say it was certainly not once a week back in those days. If your question goes forward in time all the way to now --

Q When you first got started, Mr. Lumbard, in '63?

A Right.

Q It was not once a week. How frequently were you actually engaged or involved in the Site 24 proposal for Trinity School?

A In the period 1963-1964 I would say once every two weeks or so, something would occur that had to do with that proposal for the school.

Q That was within the school itself, within the school's staff and administration?

A No. It was within the school, within the offices of Demov & Morris, within the offices of Brown & Guenther,

you be permitted to construct a new school on Site 24 without



within city offices where we met with officials. I am taking your question to mean any involvement.

Q Yes. How long have you been living in Park West Village?

A Since 1967.

Q Did you live on the West Side prior to 1967?

A No, I lived immediately across Central Park in the years preceeding, the period, for example, '59 to '67.

Q So, your involvement in terms of your observations on the West Side began basically in 1967; is that correct?

A No. They began in 1959 quite directly.

Q What you are saying, then, is when your youngster started to attend Trinity School, you got involved in the West Side neighborhood; is that correct?

A I am not sure I know what you mean by "involved in the West Side neighborhood"? I was physically in the West Side neighborhood, in and around the school frequently when my child first started going there.

Q During the daytime?

A Sometimes in the daytime because I often used to take him to school.

Q That would be early in the morning; is that correct?

A That is correct.

recollection of speaking to him about that subject.



A No, I do not. My recollection is --

THE COURT: "I do not" is an answer. Next question.

Q Now, in working with the Trinity School in your capacity as vice-president of the Parent's Association and later as a member of the Board of Trustees, did there come a time when you made yourself familiar with the proposed or final urban renewal plan at that point?

A I am not quite sure I know what you mean. I had a series of incidents happen which amounted to my learning experience, one of which was the meeting with the Board where they had these charts up there.

Q Did you have a copy of the Urban Renewal Plan?

A Did I, personally?

Q Yes?

A I recall having been given copies of plans that had the architectural firm's name on it, Brown & Guenther, and I do not know the date, but I know that was very early on because it was part of the material that we used in trying to decide whether or not to use them as our architects.

Q What I am asking you, sir, is did you have a copy of the Urban Renewal Plan?

A I believe that was labeled Urban Renewal Plan.

Q I see.

A And that would have been in the period 1963-1964

because by the spring of '64 we had selected them as architects.

Q Did you read the plan?

A I read that document, yes.

Q So you became, would you say, familiar with the provisions of the plan?

A Reasonably familiar, yes. I became familiar with that document which was, as I recall, substantially architectural material, you know, street maps and plans and so forth. I do not recall it as containing alot of written material. However, that is very long ago and I simply can't say any more.

Q Do you know, sir, how many total units were proposed for the urban renewal area?

A At what time?

Q From the beginning, 1962?

A Well, I was not told this nor were we told this by any city officials, so my question goes as to knowledge to you, what you mean by that? I learned a great deal from our counsel and my primary source of such information over the years was my counsel and, therefore, if you wish to accept as my knowledge what I learned from the firm of Demov & Morris, then I can answer you.

Q No, sir. I want to know if you had personal

We asked various persons to go in our behalf, including

knowledge. You have indicated a great interest in the West Side urban renewal area both from the ppoint of the Trinity School development, from the point of your child at that point attending the Trinity School and I want to know of your own knowledge do you know or did you know how many units of housing were proposed in the entire West Side urban renewal area?

A Well, my general recollection was in the area of 2500, but I must tell you, sir, that I leared that from a lawyer. If you are willing to accept that knowledge.

Q Did you have any part in retaining the firm of Demov & Morris?

A Yes, I did.

Q When did that happen, when did the retainer take place?

A In 1963 and they were continuously --

THE COURT: There is an answer, please. 1963 is an answer to the question as to calling for a date.

Next question.

Q You indicated yesterday that the firm, Mr. Morris' law firm, were housing experts. Did you rely upon them for information?

A Yes, I certainly did.

Q Did you meet with them often?

A You mean real estate?

A Yes, and we had --

THE COURT: "Yes." Next question.

Q Did you question them on various aspects of the urban renewal plan and the urban renewal area?

A Yes, I did.

Q Do you know, sir, of your own knowledge how many units the city proposed for redevelopment in the urban renewal area?

A No, I do not. You are speaking now in the period '63 - '64?

Q Yes, in the period when you were involved. You have testified that your involvement started in '63 and it has run right up to today, to the present time; is that correct?

A That is correct. I recall in that period going over with Mr. Morris and Mr. Pearlstein and Mr. Hammerling of his firm all these kinds of materials extensively over a period of years. I cannot say that I got that knowledge directly from city officials.

Q Or from your own research?

A My own research?

Q That is correct.

A That is correct. Mr. Johnson, who, as I say, was the lawyer, and myself had the attitude that we had retained counsel and experts to help us and we would get our information

from them and that would save us both time and probably wind up being more accurate because they could find out things more quickly and more readily and with greater skill than we could in this particular area. That is why we hired them

Q During the course of your years of involvement, sir, did there come a time when you ever heard of the number 2500 in connection with low income units in the area?

A I recall that back in the period '64-'65, but I cannot say exactly how I learned that I do not recall having learned it from any city officials directly. I have tried hard to recall that. My recollection is that it was part of the mass of material that we received at some point from Demov & Morris.

Q Did there ever come a time when you learned of the particular percentage of middle income as against low income units in the entire area?

A I do not recall.

Q Did you ever receive any document in writing from a city official which said or purported to say that you could rely on a particular urban renewal plan as being firm?

A Firm?

Q That is correct.

A I am not sure I understand your question.

Q Yesterday you testified, sir, that statements were

made to you by city officials, particularly Mr. Mollen, that you could rely on the urban renewal plan. This was in 1964?

A That is correct.

Q And so I assume he was talking about the urban renewal plan at that point in effect. Did he ever give you anything in writing which said that?

A Personally, ne never did, no. We relied on that statement and thereafter almost all the talks between the city or the state and us as an entity were had with our attorneys and our architects substantially.

Q Were you aware of the fact, sir, that between 1962 and 1968, when Trinity entered into its contract with the city, that changes had been made in the plan?

A I was not aware until I looked at the draft 1968 agreement.

Q You were not aware?

A That is right.

Q Over the six years of your involvement on a fairly on-going basis as a trustee for Trinity Schoool, you were not aware that there were changes in the urban renewal area?

A In the designations and all; that is correct.

Q Do you know how many units in the Trinity housing structure are devoted to low income families?

A 30 percent.

Q The number of units, do you know that?

A Well, it gets down -- it is 30 percent of really 200 minus an apartment for the superintendent and things like that, so it would be whatever 30 percent of 200 is, 60, minus one or plus one.

Q Are they scattered throughout the project?

A Substantially, yes.

Q Do you know under what program the low income rentals are financed?

A It has varied and at the present moment I am not aware of the specific public law designations.

Q Do you know the common name for the program?

A Well, I understand it is leased housing.

Q Does that sound like the right one?

A That is a phrase I have --

Q Is that the one at Trinity?

A I am not sure all of them are under that program, sir. There is the skewed rent program. There is some program under which persons are referred from the welfare department and exactly what program they are under at a particular moment I cannot tell you, but we are told that they are eligible for and receiving welfare assistance and I find those formulas to be quite complex and changing, but that is the catagory that they are in.

Q Mr. Lumbard, when you say "we are told", do you mean that you are told or your managing agent is told or both of you or all of you or what?

A The managing agent is told and then I hear from the managing agent as to that kind of material.

Q You participate actively in this housing corporation?

A Yes, I do.

Q So that the managing agent reports directly to you?

A That is correct.

Q Does he have discretion in certain areas?

A What do you mean by that?

Q Does he have to come back to you with respect to every decision that is made there or does he have some discretion in terms of renting policy, et cetera?

A He has really no discretion under renting policy. That is all determined, so far as I can determine, by the Mitchell-Lama program in one way or another. The rents themselves are set as to amount and they can't be varied by the building.

Q Do you know how those rents are set, Mr. Lumbard?

A Yes. They are set under really a negotiated arrangement in the first instance by the city. We had

that negotiation and they are within certain formulas and thereafter if the formulas are to be changed, that is a matter of general policy of the city, not just our particular house.

Secondly, if we as an individual house wish to get a rent increase because of economic hardship or because, as is now the case, our fuel costs have escalated fantastically and the building has simply become unprofitable at the moment, we will have to make an individual rent application based on a showing of economic need, balance sheet, profit and loss statement and so forth to try to develop at a hearing, which would be held in our building, the need for a rent increase within our building.

Q The increase, by the way, in fuel costs is not peculiar to your building, is it?

A It certainly is not.

Q You say there is some kind of a formula for setting the rent. Do you know how that formula works?

A Yes. I has to do with gross income and numbers of persons in the family and so forth.

Q In other words, people become eligible for occupancy in these middle income units, is that correct?

A Yes.

Q Because they fit into a particular formula and

there are certain criteria set up?

A That is right.

Q Do you know those criteria?

A Offhand I do not know them. If you wish them, we will be happy to submit them and Mr. Bromberg, who is the managing agent in our building, will be here to testify.

Q No, Mr. Lumbard, I know the criteria. I am asking if you know them of your personal knowledge?

A Do I have them memorized? No, I do not.

Q Do you know the income limitations, the maximum income limitations for the people to be eligible for the low income units in Trinity House?

A For the low income units?

Q That is correct?

A At the current moment I do not because the skewing formula -- I do not at the present moment.

Q Are there units in Trinity housing at the present time which work under a skewed rental formula?

A Yes.

Q There are?

A Yes.

Q How many, do you know?

A Well, the whole building is involved in the skewing formula in one way or another, but you see that

affects the low income houses in a very unique way. Exactly what the rent would be consists of really three parts. What the tenant pays, what is made up from one or another government programs and then a portion which really is made up by the other tenants as to the skewing and there is a schedule in which this is all laid out and the numbers of which I have not memorized.

Q Are there any units in Trinity House which are financed under the state's capital grant program?

A I believe there are.

Q I refer you now to Plaintiffs' Exhibit 14, which is the contract between the city of New York and Trinity Episcopal Schools Corporation, dated June 20, 1968. Are you familiar with the terms of this contract?

A Well, I stand on the testimony I gave Mr. Land yesterday when he asked a somewhat similar question. I read it at the time it was executed on behalf of the school.

THE COURT: When did you last have occasion to read it, Mr. Lumbard?

THE WITNESS: About two years ago.

THE COURT: All right. Next question.

THE WITNESS: I read it carefully then.

THE COURT: Please. Next question.

Q When you read it prior to execution by the school,

did you see in there a provision that provided for 30 percent low income families to reside in Trinity House?

A I do recall that. I believe that is in there somewhere.

Q Did you agree with that?

A Did I agree with it?

Q Agree with the concept of 30 percent low income families?

A Yes.

Q You did. When was the old Trinity School, the old structure constructed?

A Well, there are three different buildings. If you mean the oldest, is that what you are talking about?

Q Starting with the oldest and stopping just prior to the construction in the late sixties?

A I believe of the present building that are now existing, the oldest was built around 1890.

Q Yes, were there other buildings built subsequent to 1890?

A Yes.

Q When were they or it built?

A Well, there was an old Episcopal church called St. Anne's next to the first building. The parish house is now the second oldest building and in the middle of the

block. I do not know when that was built and St. Anne's Church, which used to go around and in back of that, was an even older structure. It was demolished for the new building and I believe that may go back in time before Trinity School and pieces of that still remain in the basement and so forth.

Q Was there any building prior to the new construction in the late sixties that was built after 1910?

A Yes, there is a gymnasium, which was build around 1957 or 8.

Q Now, when in 1963 you were talking and discussing the plans for developing Site 24, were you interested in constructing a new school for Trinity?

A Yes, we were.

Q That was one of the motivations for working on the development, was it not?

A It was.

Q Prior to coming to the city to discuss this development, was Trinity interested in constructing 200 units of Mitchell-Lama housing?

A Just as an abstract matter?

Q Yes?

A No.

Q Did you ever come to the city with a proposal that

site and they must do so soon and they were going to do that



you be permitted to construct a new school on Site 24 without housing?

A I think there was such a request made in the early stages, yes.

Q That would have been a much better arrangement for you, wouldn't it, in your opinion just constructing the school?

A A much better? No. I would be happy to tell you why.

THE COURT: No, please don't volunteer, Mr. Lumbard. Next question. I don't see its pertinency myself. Next question.

Q Mr. Lumbard, did you appear at a hearing before either the City Planning Commission or the Board of Estimate in connection with the proposed public housing for Site 4 in the West Side urban renewal area?

A Personally, no.

Q Did anyone appear on behalf to your knowledge of the Trinity School?

A With respect to Site 4?

Q Site 4. That would have been sometime in, I believe, June of 1970.

A I am uncertain, but I have the general recollection that Mr. Hammerling of Demov & Morris was there. I have a

recollection of speaking to him about that subject.

Q Representing the Trinity School?

A Yes, as our counsel.

Q And in that connection he was authorized to represent the Trinity Schoool there; is that correct?

A Yes.

Q Was he authorized to represent them for or against that proposal?

A Opposed it, I believe, yes.

Q In connection --

A I would like to add, if I may, exactly how he carried out our request, I am uncertain at the moment, so whether or not his name would appear on a calendar or a docket or whatnot I cannot say.

Q It was Mr. Hammerling who was the counsel who appeared rather than a trustee?

A Correct.

Q Now, in connection with the public hearings before the City Planning Commission and the Board of Estimate for the Site 30 public housing designation, which took place in December of 1971, did you or any trustee of Trinity School appear for or against that proposal at the Board or at the City Planning Commission?

A No.

Q Did the file contain correspondence?



Q Did your counsel appear at that time?

A I believe they did.

Q Do you know who appeared on behalf of your counsel?

A Again I think it was Mr. Hammerling, but I am uncertain because I wasn't there that day. Some representative of Demov & Morris.

Q That is Robert Hammerling?

A Yes.

Q Is he a member of the Demov & Morris firm?

A Yes, and he has been intimately involved with our building as have Mr. Morris and Mr. Pearlstein.

Q Is the Trinity School, Mr. Lumbard, a member of the Continue group?

A No, we pay no dues; we do not attend their meetings in terms of how you might define membership, I did not believe so, although I am uncertain as to how Continue would define "membership".

Q Is the Trinity School a member of the Stryker's Bay Neighborhood Counsel?

A It was for a while and it resigned recently.

Q When you say "recently", when?

A Within six or nine months.

Q And did someone on behalf of Trinity School attend meetings regularly at Stryker's Bay?

you recall?



A I don't know how regularly they met so I can't say. We asked various persons to go in our behalf, including teachers, and they were so harrassed that we later could get no teacher to do.

MR. GOLD: If your Honor please, I would respectfully like to move to strike the word "harrassed" from the last answer of the witness.

THE COURT: Would you mind, Mr. Court Reporter, reading it to me.

(Record read.)

THE COURT: The motion is granted. That word "harrassed" is stricken.

MR. GOLD: Thank you, your Honor.

Q You mentioned in yesterday's testimony that recently you have had to hire a security guard or security guards for the school; is that correct?

A Correct.

Q Would you say that the hiring of security guards both for private schools in New York City and public schools in New York City is a fairly common thing today?

A I would not know.

MR. GOLD: Excuse me a moment.

(Pause.)

Q Does the Trinity School have a tax exemption,

Mr. Lumbard, do you know?

A You mean real estate?

Q Real estate taxes?

A Yes.

Q Does the housing portion of the project have tax exemption?

A It has tax abatement, not exemption.

Q Tax abatement. Do you know to what extent?

A You mean percentagewise?

Q Yes, sir.

A I did know. I have not memorized the formula. We could find out if you wish to know.

Q No, I want to know if you know?

A At the moment as I sit here I do not know the exact dollars involved in the tax abatement.

Q You mentioned yesterday that, I believe, Trinity School put some so-called front or equity money over and above the city's mortgage into the housing; is that correct?

A Yes; that is correct.

Q Has the school been able to recoup any of its investment as a result of the divident throwoff from the housing?

A It has received some small sums and I would be happy to give you a schedule of that if you wish.

Q It is not necessary, but it has received some small sum?

A Yes.

Q And you do occasionally have a dividend on the limited profit housing company?

A Yes, but not up to the percent of the formula. Some small amount, yes.

Q You mean less than six percent?

A Yes, it is a bad investment.

Q Is there a waiting list for the Trinity Housing Project?

A To some degree. It varies from time to time, but --

Q What do you mean by "to some degree"? Are there ten people on the waiting list, is there one person on the waiting list, could we get a number?

A You mean today as I sit here?

Q Yes.

A I do not know how many people are on the waiting list today

Q When is the last time --

A Mr. Bromberg can tell you that.

Q When is the last time that you personally investigated or looked into the waiting list for Trinity School, if any? Trinity Housing, I am sorry.

A About a month ago.

Q What was the number of people on the waiting list about a month ago?

A We did not discuss waiting list numbers on that occasion. What we discussed was a related subject in which that was implied.

Q So, you don't know how many people are on the waiting list today and you don't know how many were on the waiting list a month ago; is that correct?

A May I explain?

Q Sir --

THE COURT: No, please. Do you happen to know?

THE WITNESS: No, the absolute number, no.

THE COURT: Can you give us an approximation, Mr. Lumbard?

THE WITNESS: I thought there were maybe about 25 or 30.

THE COURT: All right, thank you.

Mr. Gold, I don't want to cut you off short, but how much more time do you need?

MR. GOLD: I will be very short and maybe none at all.

THE COURT: I do feel I owe it to the students to spend just a few minutes with them so as to make their trip

worthwhile.

Remember how it was when you went to school and there was a teacher who was a lecturer or speaker in the assembly and how everybody wanted him to go on speaking ad infinitum, no matter how disinterested we were, so we wouldn't have to go to classes?

MR. GOLD: Yes, sir.

THE COURT: All right.

MR. GOLD: I remember.

Q The pattern of rental at the Trinity House, would you say that has been fairly stable since the initial occupancy?

A Could you tell me what you mean by "fairly stable"?

Q Have you had many vacancies for long periods of time?

A No.

Q So, the apartments generally have been fully occupied since you initially started; is that correct?

A That is correct.

Q Within the number of units that are now occupied by low income people, are there welfare people within those units, do you know?

A Yes.

Q Are there any welfare occupants outside of the

number of units allocated for low income?

A Not to my knowledge, but there is no way we would know in some cases.

MR. GOLD: I have nothing further, your Honor. Thank you.

THE COURT: All right. If something comes to mind later on, don't hesitate to make application.

MR. GOLD: Excuse me, your Honor, while I am here one more thing does come to mind.

THE COURT: Yes, sir.

Q Are you familiar, sir, with the property located at 2 West 90th Street?

A 2 West 90th?

Q Yes. Just to refresh your recollection --

A Is that a six story or thereabouts rehabilitation job?

THE COURT: He is trying to identify it. Is that what you are talking about?

Q Yes; that is correct?

A It has just opened or it is just in the process of opening and being filled?

Q Yes. So, you are familiar with it, right?

A What is the name of the project? The address is what puzzled me.

THE COURT: On what corner is it, by the way?

MR. GOLD: It is on West 90th between Central Park West and Columbus Avenue.

THE COURT: Thank you.

THE WITNESS: Right next to the school?

MR. GOLD: I would think so, yes, but you are familiar with it. Obviously you knew that it was a six story with something happening there.

Q Is that correct?

A I understand it. Do you wish to know what I know about it?

THE COURT: Please, Mr. Lumbard. Would you be good enough to tell us just what is the location of the building that you have in mind so that the record will show that your testimony related to the building that you have designated.

THE WITNESS: All right. It is on the North side of the street. It is between a public school and a large apartment house, which is on the northwest corner of Central Park West and 90th Street, and it occupies, this particular rehabilitaiton job occupies all the space between those two building to my recollection and it has been under construction in various stages of that for a long period of time and is just now accepting tenancies.

THE COURT: All right, that is the building that you have in mind.

Mr. Gold, won't you put your question, please.

MR. GOLD: Yes.

THE WITNESS: May I ask what the name of the building is?

THE COURT: Do you happen to know the name, Mr. Gold?

MR. GOLD: It does not really have a name.

THE COURT: All right. Thank you.

THE WITNESS: May I ask if I am talking about the same building?

MR. GOLD: I believe so, yes.

Q Do you know what method of financing was used to do the rehabilitation on this building?

A No, I do not.

MR. GOLD: Thank you.

THE COURT: All right. This can be off the record.

(Discussion with the students off the record.)

THE COURT: Announce a recess, Mr. Clerk.

(Recess.)

THE COURT: Continue with the cross, please.

MR. DOUW: Your Honor, I have a few questions.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. DOUW:

Q Mr. Lumbard, I believe you stated in your direct testimony that back about the period of 1962, 1963, when you were associated with the Parents Association of Trinity School, that there was a discussion and controversy among the Trinity community as to whether to move to Pawling or stay in New York.

Is that correct?

A That's correct. Well, yes. '62?

Q In that period.

A Yes, and earlier.

Q And earlier. And I believe you stated that you were among those who wanted the school to stay in New York, is that correct?

A That's correct.

Q Did you ever hold a contrary opinion during any of this time?

A Personally?

Q Yes.

A No.

Q You always wanted the school to stay in New York?

A That's correct.

Q I would like to turn to the meeting that you had at the Bar Association I believe it was -- I believe you stated it was in the spring of 1964.

Is that correct?

A No, it's not.

Q What was the date of that meeting?

A It was in the fall of '63.

Q Fall of '63. I beg your pardon.

And I believe you stated you attended a meeting at which Mr. Milton Mollen spoke.

Is that correct?

A Yes.

Q Did he speak about the West Side Urban Renewal Area or any subject like that?

A To the group?

Q Yes.

A No. But when you say "any subject like that," he spoke -- he was there for the purpose of and spoke about the potential of the Bar becoming a sponsor in some west -- not the West Side necessarily but some urban renewal area or some kind of conception where a Mitchell-Lama would be built, and since the Association would be the sponsor,

young lawyers would be preferred as an opportunity to live there.

Q But the project that he was speaking about was not necessarily about the West Side Urban Renewal Area, is that correct?

A I do not recall him even discussing the West Side Urban Renewal Area.

Q Did you testify that you approached Mr. Moller during a break in the meeting and spoke with him that evening?

A At a break and afterwards, with Mr. Morris.

Q With Mr. Morris.

A Who was chairman of that committee by appointment of the president of the Association.

Q And that your approach to Mr. Mollen with Mr. Morris was to raise the question with Mr. Moller about the sponsorship of Site 24, is that correct?

A Yes, whether it was still open.

Q Now, as I understand your testimony, you stated that Mr. Mollen said that the question of the sponsorship was about to lapse in a couple of weeks, or words to that effect.

A No, not lapse. Was about to be decided, that the board, whatever its proper name at the moment, had come to the conclusion that they must name a sponsor for that

site and they must do so soon and they were going to do that within the immediate few days.

Q [illegible] by "board" do you mean the Housing and Redevelopment Board?

A Whatever he headed. The names have changed so many times over the years.

Q Whatever the agency was Mr. Mollen headed?

A Yes, at that time.

Q And did Mr. Mollen indicate whether there were any other applications for the sponsorship of Site 24?

A I don't know whether he did at that moment, but I knew -- I can't now tell you how I knew -- that there were other applications, and my recollection is they were from commercial real estate speculators.

Q And it was suggested in this meeting with Mr. Mollen at the Bar Association that you or someone representing Trinity write a letter proposing Trinity as a sponsor or at least indicating a consideration of that possibility, is that correct?

A That's correct.

Q And was it Mr. Glover Johnson who wrote that letter?

A Ultimately, yes. It was shown to me here, and I forgot the number, but it's in evidence. It's dated

December 18, 1963.

Q Wasn't the meeting of the Bar Association in the fall of '63?

A That's my recollection.

Q And wasn't it necessary to write a letter shortly after that meeting?

A I think there was an interim letter of some kind, as I perhaps testified. If I did not, I should. There was an expression of interest that was immediately dispatched. Who signed that letter, I do not now recall. It was someone in authority and someone other than myself, but he made it clear that whatever might be the holding action, the serious letter would have to be signed by the chairman of the board, and that's the December 18th letter.

Q Who made it clear?

A Mr. Mollen.

Q I believe you also testified that prior to this particular meeting that we have been discussing that the headmaster of Trinity showed you a file which you took to study and which indicated the City's desire to have Trinity as a sponsor, or at least that was part of the file, is that correct?

A That's correct, and there were oral discussions to that effect, too, which were reported to me.

Q Did the file contain correspondence?

A There was correspondence in there and there were a lot of memos. Whether or not a letter or a memo made that point, I cannot now say.

Q Do you have the file available today?

A I do not. I do not even know where it is or if it still exists.

Q I believe you testified at some point that you had a meeting with Mr. Mollen at his office at which others were present representing the City and you were also present with Mr. Johnson representing Trinity, is that correct?

A That's correct.

Q Can you tell us again the approximate date of that meeting?

A The best I can recall is the spring of 1964.

Q And in Mr. Mollen's office you say that there was a chart or charts which indicated the plan of the urban renewal area, the various site locations and the proposed disposition of those sites, is that correct?

A That's correct.

Q Was it a map, what we are speaking of, the chart?

A Well, street map.

Q Street map of the urban renewal area only, do

you recall?

A I don't remember anything other than maybe the periphery. I don't recall.

Q Was it hanging on the wall or on an easel or what, if you recall?

A I remember it as being on an easel, but I also remember things that were on the table top like reproductions, smaller ones passed around.

Q Were all of these large items?

A The big one standing up was. The ones down below were not. They also had a lot of specific things with a folding thing with a binder on one side, but I don't remember the content of that.

Q Mr. Lumbard, I show you a copy of Plaintiffs' Exhibit 14A. This is a page from Exhibit 14, which is the Trinity contract which you testified to yesterday.

It is a land use map, and I would like to ask you if the chart you are speaking of, the large one, is similar, if you can remember, to this map which is 14A?

A Similar or identical?

Q I say similar or comparable.

A Yes, I think within that definition.

Q Did Mr. Moller or any of the others present representing the City point to this large chart to show you the

A I don't have a how long. It can be just a few



intended dispositions of certain sites?

A Yes.

Q And that some would be middle income and that kind of thing?

A We discussed that at some length.

Q You also testified about a later meeting with Mr. Jason Nathan and I believe other people representing The City at a later date, is that correct?

A That's correct.

Q And that was about two months after Mr. Nathan took office?

A That's my general recollection.

Q Do you know what year that would be?

A Well, I have it in my head as in the '66-'67 period, but I am unable to particularize it more than that. It was, as I recall, at the commencement of the Lindsay administration, and the fact of the change of administrations was the genesis of that meeting. Both sides wished to talk to each other to make sure that the policies would continue, because at that point in time, while Trinity had expended a lot of design money, it had not yet committed itself to the project.

Q Was Mr. Nathan Mr. Mollen's successor at the Housing and Redevelopment Board, or whatever the name of

the agency was by that time, if you know?

A I do not know if he was his direct successor. We dealt with him as the man in charge of the City's policy in housing, which I took to be Mr. Mollen's position when he had it, and whether there were some interim people or not, I don't know.

Q When you met with Mr. Nathan, was there also at this time -- it was in Mr. Nathan's office, is that correct?

A Yes.

Q Was there also at this time as well some kind of chart which indicated the location of sites and the dispositions of sites and that kind of thing?

A Yes.

Q Do you know whether it was the same chart that you splke about in Mr. Mollen's office at that meeting?

A I am not able to say "same." The word "same" causes me a problem. I can say --

Q I can clarify the question, if you would like.

I don't mean the identical piece of cardboard necessarily, but did it purport to show the same thing that Mr. Mollen showed you when you met with him?

A With respect to the immediate area around the school, I can state yes, because that's what we were most

concerned with at that time and that's what I now and then recall.

THE COURT: What did that reflect, to be exact?

THE WITNESS: That reflected Site 24, in which the school was specifically interested in becoming sponsor, as middle income housing. It reflected Site 30 as middle income housing. It reflected immediately across from the school on 90th Street a low income public housing. It reflected immediately across the school on Columbus Avenue Low income public housing. It reflected catty-corner from the school on 90th, 91st, in each direction, middle income public housing. It reflected immediately to the north on 90th Street middle income public housing. And that was the immediate core of our current concern, namely, that two low income public housing projects were scheduled to be immediately across the street from the school and that it would not expand beyond that.

We were willing to accept two but no more. And the rest were middle income Mitchell-Lama scheduled, right on the chart.

THE COURT: Concentrate on what you just testified to.

When for the first time and where, if you recall, were you given to understand that there was proposed a

variance as to even one unit of that total picture that you have just enumberated?

THE WITNESS: When in 1970 or so the Board of Estimate and the City went through changing the plan.

THE COURT: Next question, please.

BY MR. DOUW:

Q Can you tell me whether the chart which you looked at with Mr. Nathan at that meeting showed the whole urban renewal area?

A It did, but I cannot now recall everything in the whole area.

Q No, not everything. Whether the chart showed the whole area.

A It did.

Q The whole twenty blocks.

A What I have a very clear recollection of is the specific situation involving our school and what I just testified to.

Q I show you Plaintiffs' Exhibit 14A and ask you if the chart in Mr. Nathan's office resembled this exhibit?

A In the same fashion as you asked that question before?

Q Yes.

A Yes. That again I am not able to say is identical

in nature.

Q I am not asking whether it is identical, just whether it is similar.

A Yes. And it was identical on both instances with respect to the plots I just testified to.

Q Mr. Lumbard, do you have any recollection as to whether the chart which Mr. Nathan discussed with you was different in any respect from the chart which Mr. Mollen discussed with you?

A In any respect?

Q In any respect, yes.

A I have no such recollection at the moment.

Q Mr. Nathan or anyone in the City, as far as you can recollect, said, "Well, this was at one time one designation and it has since been changed," you have no recollection of that?

A I have no recollection of that. It has been my testimony there has been a continuity of representation to us by the City with respect to those specific sites about which I have just testified. If you give me the chart I will give you the numbers of the sites.

THE COURT: I don't know whether you intend to ask him, but I would, if you don't, Mr. Douw. Let him have the chart and let him designate. I would like to have

it pinpointed as much as possible.

MR. DOUW: I can give him the chart again, your Honor.

THE COURT: Thank you. That is 14 --

MR. DOUW: This is 14A.

THE COURT: Take your time now, Mr. Lumbard. You may be quick about it, but it is very important.

THE WITNESS: May I make a suggestion?

THE COURT: Yes.

THE WITNESS: You take this and I have another one.

THE COURT: I want the record to reflect what you maintain 14A shows in regard to your testimony with respect to middle income housing, the details of which you gave within the last five minutes.

THE WITNESS: Yes.

MR. DOUW: I have an extra copy, your Honor, if you wish.

THE COURT: Thank you very much for your courtesy, but I am more concerned that the record reflect what he has to say.

THE WITNESS: May I make only one comment, which is that the legend on that xerox you gave me is not accurate with respect to the tax abated housing at moderate rentals or some such word, "charges," I can't read it, in that the

xerox does not show shading and yet shading on the chart is middle income housing.

Q Let me clarify the purpose for which I originally showed you the chart, Mr. Lumbard. I just asked whether it was similar to what you had remembered in these meetings and also provided as a guide to discuss.

A I understand that. I will do that. I just want to say if this gets marked middle income on this chart it is not color coded due to this particular xerox.

THE COURT: All I want you to do is to answer my question, if you will, by giving details from 14A in evidence you claim fits in with the answer you gave a few minutes ago where you enumerated certain parcels.

Do you remember?

THE WITNESS: Yes.

THE COURT: You said they were to be middle income; do you recall you said that?

THE WITNESS: Yes.

THE COURT: Give us the details as reflected by 14A in evidence.

THE WITNESS: I specifically recall Site 24, which is the Trinity site, has been designated middle income housing at all times.

MR. LAND: This applies both to the '63 and the

'64 meeting, identifications were identical as to both meetings?

THE WITNESS: There is no '63 meeting. It applies to the '64 meeting with Mr. Mollen and it applies to the subsequent meeting with Mr. Nathan.

MR. LAND: Which was in what month?

THE WITNESS: I did not say what month it was in. I said it was within several months of his assuming office, a meeting sought by either side to confirm the arrangement.

THE COURT: Would you go ahead, please.

THE WITNESS: The date of his -- all right. Site 24 has been midle income housing and is on this exhibit.

BY MR. DOUW:

Q Mr. Lumbard, may I interrupt you a moment. Again don't refer to which the exhibit indicates. I am using that for what your memory was at the time of the meeting.

THE COURT: Mr. Douw, forgive me. It's my question.

MR. DOUW: I beg your pardon.

THE COURT: Not yours. I want the record to show what this witness maintains is reflected in 14A that fits in with the answer he gave during the last few minutes with respect to certain designated parcels which he claims he was told would be middle class income.

You remember, don't you?

THE WITNESS: Yes, sir, I am ready.

THE COURT: Go ahead and finish your answer.

MR. DOUW: I beg your pardon, your Honor.

THE WITNESS: Site 24 as middle income housing. That is the Trinity site.

THE COURT: Yes, sir.

THE WITNESS: The school is immediately to the west, that blank white space is the old Trinity school.

THE COURT: Thank you.

THE WITNESS: That has continued, of course. Immediately across the street from that school is Site 29, which has always been low income public housing, a large complex of several buildings. It is not just one.

Coming immediately east of that, Site 30, which is involved in this lawsuit, was at all times designated middle income housing.

Going across the street from 30 is 31. That was then designated middle income housing and it is on this exhibit.

Going immediately to the north, Site 25, immediately across the street from the school on Site 24, Site 25 was then and at all times has been designated low income public housing. So there is a project on two sides of the school.

Immediately to the north of that on Site 21, that Site 21 has at all times known to me been middle income housing.

Then going back to the west from 21, you come to Site 20, which is again immediately to the north of the school on Site 24. That at all times has been middle income housing, and that is the complex about which I specifically testified.

THE COURT: Thank you.

Now, Mr. Douw.

BY MR. DOUW:

Q. Now, in your discussions either with Mr. Moller in that meeting or with Mr. Nathan in that meeting, did you discuss Site 36 at all?

A In words?

Q Yes.

A I recall no discussion at this moment in time on Site 36.

THE COURT: You see it on 14A, don't you?

MR. DOUW: Referring to 14A.

THE WITNESS: Yes, sir.

THE COURT: All right, next question.

Q Mr. Lumbard, I gathered from your testimony about the meeting with Mr. Nathan and Mr. Mollen --

A And Mr. Mollen?

Q And Mr. Mollen. -- that you, as a representative of Trinity, were concerned about the obligations which the City would undertake to Trinity with respect to the sponsorship of Site 24, is that correct?

THE WITNESS: Could I ask it be read back?

THE COURT: Surely.

(Question read.)

A Yes.

Q Did anyone representing the City raise with you the obligations which Trinity might owe to the City or to the community as the sponsor of Site 24?

A Would you spell that out? In what respect?

Q Let's take one example. You talked about an allocation of the number of apartments in Site 24 to low income persons, is that correct?

A Yes.

Q And that was originally 20 per cent?

A Yes.

Q Was there any discussion about relocatees?

A Yes, there was a discussion that some portion of the tenant mix at some date down the fiture would have to account for relocatees to some degree. That became the subject of a lot of talk and negotiation between our counsel

and the City but not involving myself.

Q Was there any discussion at either of those meetings about whether Trinity would offer its facilities to people in the community at a certain specified time?

A What do you mean by "its facilities"?

Q You have a gymnasium, do you not, in the school?

A Yes.

Q Do you have an indoor swimming pool?

A We do.

Q Was there any discussion as to whether those facilities would be offered to people in the neighborhood?

A Never.

MR. MORRIS: I will object to this line of questioning. It was not covered in direct examination and it's an entirely extraneous matter which I don't think relates to the situation before the Court at all.

THE COURT: You are right in one particular, but I don't want to cut him off when he seeks some collateral issue that comes to his mind as long as he doesn't take too much time about it.

Put your question right to him and let's get what you are after, Mr. Douw.

THE WITNESS: The answer to his last question was never.

THE COURT: Yes, sir, I heard it.

THE WITNESS: But --

THE COURT: Please. You would be amazed how much your enlargements cause them to spend a lot of time which they wouldn't do. You are the one encouraging them.

Next question.

Q I believe you testified that Trinity House -- is that the correct name, the proper name, for Site 24 now, Trinity House?

A It has been known by two names, Trinity House --

THE COURT: We know what you mean. Let's go on.

Q Trinity House was completed about December, 1969, is that correct?

A What I testified to was that the project began to be used in December, 1969, but that on a sliding sort of scale the building complex became more and more usable up to September, 1970.

THE COURT: You did so testify.

Next question.

Q And you are now president of Trinity House Company?

A Yes.

Q Have you been so since 1969?

A Whenever the company was formed. We can get you

the date, if you desire.

Q Did you testify that you have an office at your disposal at Trinity School,in the basement of Trinity School, I believe?

A No, I did not. I said in the housing complex. There is right near the elevator shaft a building office which is largely occupied by the building superintendent, also by the building managing agent and their representatives, and it is available to me to use whenever I wish. It is for the building management.

Q And you go there fairly frequently, do you not?

A What do you mean by "fairly frequently"? I am around there once a week.

Q When was the last time you were there?

A I believe last Wednesday night.

Q Last Wednesday night, a week from today, right?

A Yes.

Q Do you generally go in the evening, during the day, or can you make a generalization?

A I can't make a generalization. I go there when I happen to be around. That's the way it works. Indeed, I try to avoid a regular time of arrival.

Q How long do you usually stay when you make such visits to that office?

A I don't have a how long. It can be just a few moments or it can be up to fifteen minutes. Often -- all right.

Q What is the address of Trinity School?

A 100 West 91st.

Q 100 West --

A 91st. Did you say the school or the house?

Q The school.

A The school is actually on both sides of the block. We use more the 90th Street address. We don't have an address. We use the old building for some mailing purposes, we use the new building for other mailing purposes. Essentially, the lower school is now in the old building, the upper school in the new building. It depends what address you want. But they run through the block.

Q Between what two streets is Site 24?

A Columbus and Amsterdam.

Q The number strees?

A 90th and 91st.

Q Mr. Lumbard, I show you Exhibit 14A again and ask you on what streets Site 24 is located on that map?

A It says here it is between 91st and 92nd.

Q Is the map incorrect?

A I believe the project is between 90th and 91st.

Q I believe you live in Park West Village.

A That's right.

Q 97th and Columbus?

A Yes.

Q Do you regard that as a good project?

A As a what?

Q A good project, a good place to live.

A Yes. I live there.

THE COURT: It wouldn't follow because you live there that it is. I have been at my place for 43 years. I can tell you how it compares over the years and all of that. All he wants to know is do you regard it as a good project.

THE WITNESS: I testified yes, your Honor.

Q You have lived there since 1967, I believe?

A That's correct.

Q Is Park West Village guarded at night, Mr. Lumbard?

A Guarded?

Q Yes. Are there guards there on the grounds?

A Yes.

Q Do they have police dogs, the guards?

A Yes, they do.

MR. DOUW: May I have a moment, your Honor?

entrance,which is in the new school building, is immediately

THE COURT: Surely.

(Pause.)

THE WITNESS: Your Honor, may I make a request?

THE COURT: Surely.

THE WITNESS: I would like to be able to call my secretary at 12:00 Noon about a client.

THE COURT: Mr. Douw, how long will you be?

MR. DOUW: A few more minutes.

THE COURT: Will that be all right?

THE WITNESS: Yes. I would only be a minute or two.

THE COURT: Would you want him for redirect?

MR. MORRIS: I have some redirect.

THE COURT: You go ahead and do it now. Is that what you want to do?

THE WITNESS: Yes.

THE COURT: Do it now so counsel won't feel he is under pressure. Use the robing room. That is the least courtesy that can be extended.

MR. LAND: Your Honor, while we have this short break, yesterday during my cross examination I stopped it because of the question as to which provisions in the contract did plaintiff claim were in fact breached. I am wondering if Mr. Morris has had the opportunity yet to do

as contained as part of that contract? I show you Exhibit 14.

that.

MR. MORRIS: I have, yes.

THE COURT: Would you give him an answer, please.

MR. MORRIS: Yes.

THE COURT: Make it full and complete so that there are no amendments hereafter. Or do you want further time to put it in writing or read a statement or which? I don't want any changes. I want to avoid changes.

MR. MORRIS: I am perfectly willing to make the statement now and then we will, of course, after the trial, submit memorando to your Honor in which we will set forth fully our position with respect to this, since this is one of the crucial issues in the case.

THE COURT: Of course.

MR. MORRIS: I fered to Plaintiffs' Exhibit 14 and refer you to page 3 in the printed contract which contains a whereas clause.

"Whereas there has been formulated and presented to the City Planning Commission for consideration and approval a plan herein called the Urban Renewal Plan, annexed hereto and marked Exhibit C1 and hereby made a part of this agreement, which Urban Renewal Plan provides for demolition, clearnance and redevelopment of said urban renewal area and the construction thereon of fireproof

up to, say, fifteen or so, Trinity would be allowed to have dwellings" and so on.

THE COURT: All he wants to know is what provision. They all have a specific identifying mark and that's all he wants. Just give him the list.

MR. MORRIS: Right. The other provisions, the position of the plaintiff is that the terms set forth in the urban renewal plan in accordance what what I just read are binding upon the City as part and parcel of the contract, and the terms of the urban renewal plan must be complied with by the City, and if the City fails to comply with the provisions of the urban renewal plan, then to that extent that is a violation of the agreement between the parties and that is the violation upon which we predicate our case.

THE COURT: Were you able to make your call?

THE WITNESS: Yes, sir.

THE COURT: Won't you come back.

That completes your answer to Mr. Land's question?

MR. MORRIS: Yes.

MR. LAND: It's the first whereas clause on page 3?

MR. MORRIS: Yes. Plus the urban renewal plan itself which is contained in the document.

THE COURT: All right.

them as middle income public housing. You meant Middle





BY MR. DOUW:

Q Mr. Lumbard, one more question about Park West Village.

Do you know how long Park West Village has been guarded?

A No, I don't.

Q Has it been as long as you have been there, if you recall?

A I really don't recall the early '67, '68 years in that regard.

MR. DOUW: If I may have a moment, your Honor?

THE COURT: Surely.

(Pause.)

MR. DOUW: I have no more questions.

THE COURT: Mr. Land.

MR. LAND: One question on procedure.

I wonder if I should continue my cross examination which was interrupted yesterday or let Mr. Morris have his redirect.

THE COURT: It was not interrupted. You asked a question. I asked Mr. Morris to undertake to respond thereto rather than have this witness, who hadn't seen the document for years, start to look for it and take maybe ten times that amount of time, and Mr. Morris undertook to give

you the answer, and he has just given you the answer.

MR. LAND: In connection with one item of testimony, then, upon which we had violent objection to its introduction, perhaps the Court would now consider a motion to strike.

THE COURT: You can make your motion, certainly.

MR. LAND: Yesterday Mr. Lumbard testified that Mr. Milton Mollen told him that Trinity could rely upon the plan.

That is my motion. If plaintiffs contend that that oral statement of necessity must be incorporated into the contract upon which they rely in order to establish the breach, then before the Court may receive that oral statement in evidence the plaintiff must satisfy the requisites for admission of evidence against the parol evidence rule as applied to written contracts.

I have the rule of parol evidence that is established in the case of Mitchell vs Lath, 247 N.Y. 377 (1928, Court of Appeals in New York).

That case stands, I believe, for this proposition, that a written contract for the sale of land having been made, then an oral agreement or purported oral agreement made prior to the entry into the written contract for the sale of land may not be admitted into evidence under these

worth.



conditions: one, the agreement must in form be a collateral one, collateral to the written contract; secondly, the oral agreement must not contradict the express or implied provisions of the written contract; and three, the oral statement must be one that the parties would not ordinarily be expected to embody in the writing.

It is our contention that something as critical as a statement"You may rely upon the plan" is something so very fundamental to the disposition of Site 24 that if it was intended to bind the parties it would have been in the contract.

And Mr. Morris now tells us that there is no provision in the contract relating to that phrase, "You may rely upon the plan."

So either we accept the contract as it is and exclude the oral statement, "You may rely upon the plan" or if we include -- if the Court wishes to include that oral statement, then the plaintiffs must first satisfy the three tests for admissibility against the parol evidence rule.

Does the Court understand my argument?

THE COURT: I believe so.

MR. LAND: Thank you, your Honor.

MR. MORRIS: May I be heard?

Q Yes.

THE COURT: Yes.

MR. MORRIS: We respectfully submit that the testimony does not contradict the provisions of the written contract itself. The testimony was that the urban renewal plan would proceed in accordance with the urban renewal plan that was pproved by the City of New York, the Federal Government, the Board of Estimate and all the other authorities, and this contract states exactly the same thing.

Therefore, the testimony in which Mr. Lumbard has testified as to the conversations that that was the case are incorporated and embodied within this document, and the reason for adducing the testimony is to give the Court the circumstances and the situation which existed at the time this document was entered into by the parties and it is claimed and the essence of our case is that compliance with the terms of the urban renewal plan, which is part and parcel of this document, is the issue in this case.

If the City complied with it and did not violate the urban renewal plan, then we are wrong on that issue. If the City failed to comply with the urban renewal plan which is contained in here, then we should prevail in this litigation on that point.

There are, of course, other points in the case which I am not addressing myself to now.

included our counsel, Demov and Morris.



Therefore, I respectfully submit that we have complied with the provisions of Mitchell vs Lath that counsel just read in that this document is not in any way at variance with the testimony adduced by Mr. Lumbard.

MR. LAND: Your Honor, on this highly critical point, I would like to have an opportunity to respond.

MR. MORRIS: Your Honor, may I respectfully suggest what we are dealing with is one of the basic issues to be determined in this case --

THE COURT: It is indeed. I was deceived. There is no way that lawyers read the Judge's mind unless the Judge expresses himself. I was going to rush in and say, "I am not prepared to rule on that, I am not at all sure of my ground. I want to study what Mr. Land has to say."

Then I said to myself, "Can I get them to give me a memo? Should I? They have so much to do."

I am going to reserve decision on it, in any event, and if you can somehow supplement what you have advanced before me orally by way of a written memorandum or if it would help you more to be given additional time to argue orally, I will do it either way you wish, but I won't rule on it now.

MR. LAND: I think that is probably the best. Perhaps a written memorandum would be appropriate.

Q Did you make a [illegible] on behalf of Mr. Mollen or any other agency

I would like to speak right now to crystallize my thoughts so we have them in mind.

I am not sure exactly what plaintiffs' contention is here. Here is the dilemma. If plaintiffs' contention is that the oral statement by Mr. Mollen is binding and the interpretation given to that statement by Mr. Lumbard was that it meant that the site designations in existence at the time the oral statement was made, those site designations were fixed and you could rely upon the designations to remain that way rather than the other concept of relying on a plan that we have, a general plan, the specifics of which within the plan may change, Mr. Lumbard, as you recall, rejected the latter view and adopted the prior view.

If it is plaintiffs' contention that the specific site designations, specifically Site 30 designated as middle income back in 1964, if the plaintiffs contend that they rely upon that oral statement, then their second contention may be this, (a) even if the conversion of Site 30 to low income housing will not tip the area, nevertheless you still cannot build low income housing because that would be in violation of the agreement no matter what the consequences of low income housing. So if that is their contention, that it doesn't matter if it is going to tip or not, we simply have an agreement it is going to be middle income;

if it is not middle income you get the injunction, boom. If that is their contention, his statement must be the parol evidence rule.

On the other hand, their contention may be this: notwithstanding the oral representation by Mr. Mollen, the injunction will not obtain unless a conversation of Site 30 to low income will in fact tip, in other words, you must have the tipping.

THE COURT: I have been laboring under the belief that the latter position that you have just gotten through in the last few words which were addressed to it, I say that is what I have been laboring under as the position of the plaintiff.

Let's turn to counsel right now.

MR. LAND: One more comment.

THE COURT: I want to learn it.' I want to understand it.

MR. MORRIS: Yes, your Honor, definitely yes.

THE COURT: That is all you need to say.

Now go on.

MR. LAND: If the contention by plaintiff is we get the injunction against Site 30 if there will be tipping, then it follows logically that the oral recitation by Mr. Mollen is irrelevant because the whole concept of tipping

under plaintiffs' contention is something which is an integral element of the plan in toto without regard to site designations. In other words, the plan says we are going to have an integrated, viable neighborhood. That's the purpose of the plan.

If any of the projects cause tipping, then the purpose of the plan is violated and then they get their injunction as opposed to a particular site.

So that whether or not some publid administrator made an oral representation that "You can rely upon particular site designations" then becomes irrelevant to the plaintiffs' cause of action.

THE COURT: I get your point.

Do you want to say anything?

MR. MORRIS: I do. I want to say it is directly relevant, the testimony to the effect that a representation was made to the Trinity School people that the urban renewal plan would be carried through in accordance with the manner in which was the plan was delineated.

It is perfectly true that there was a change in the plan from the 1964 date that Mr. Lumbard testified to up to 1966, when the fourth amendment went into effect, and that change was at Site 36, which Mr. Lumbard did not allude to in the course of his testimony. Mr. Lumbard

Q In this period during the mid-1960s, Judge Tenney restricted himself to the projects immediately surrounding Site 24 and he did not refer to Site 36. In fact, one of the counsel asked him on cross examination what happened with Site 36, and he said he didn't know because that's a couple of blocks from the project and he was only concerning himself with those immediately before the project.

Therefore, the testimony which has been adduced both as to the 1964 conference with Mr. Mollen and the later conference with Mr. Nathan in 1966 and '67 represent a long period of time during which the Trinity people were led to believe that there would be performance of the urban renewal plan.

Now, changes could occur in the plan, and they did in fact occur as to Site 36, but in a way which would not affect adversely the Trinity situation, and that's what Mr. Lumbard's testimony has been; and I submit, your Honor, it bears directly on the issue in this case and it is not barred by the parol evidence rule because it is testimony which is perfectly consistent with the document admitted into evidence.

THE COURT: Gentlemen, here is how the Court disposes of it. Decision is reserved. Counsel will have the benefit of their daily copy. Then can read what they said to me. If they wish to amplify it, then will be

anything in such a formal fashion. [illegible]

given until a week from today to submit any additional comment. Do it in writing or ask permission to do it orally. I prefer it in writing. You can see what you have said. There is no use repeating it. If there is an additional thought or thoughts that come to your mind that have not been clearly stated, you resort to what I have said in a general memorandum that will express your views so that I will have the totality of your argument on this very important point.

Very well. Now can we complete the examination of this witness?

THE WITNESS: Your Honor, by inadvertence, and I don't understand why, counsel has directed my attention to Site 24 which does in fact lie between 91st and 92nd on this exhibit.

MR. MORRIS: That was one of the questions I was going to ask you.

THE COURT: I figured that would torment you.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q So you were mistaken, it is between 91st and 92nd?

A That's correct.

Q Mr. Lumbard, I show you a copy of Plaintiffs'

Exhibit 10 in evidence and ask if this is the brochure or one of the brochures which you testified that you saw in connection with your earlier testimony?

A It is a brochure I have seen. It is not a brochure that I testified to that helped us decide whether or not to retain Brown & Guenther, because this is much later in time than that decision.

Q Does Brown & Guenther's name appear in that?

A Yes.

Q Where?

A On the back cover.

Q At the back of the exhibit is the name Brown & Guenther?

A But I did see that at some subsequent time.

Q And they are listed as the planning consultants, is that right?

A Yes, on that sheet.

Q On this sheet?

A That is my understanding of what they were.

Q Mr. Lumbard, is the school entrance, the entrance to the school, the Trinity School, immediately across the street from the public housing which is directly across the street?

A The lower school entrance is. The upper school

MR. POLK: One question.



entrance,which is in the new school building, is immediately to the north of Site 30.

Q Immediately to the north of Site 30?

A Yes.

Q So that the entrance to the main part of the school is directly across from the existing public housing, is that correct?

A I am not adopting the words "main entrance." Both entrances are used.

Q So the entrance to the old school --

A Is across from the public housing.

Q From the existing public housing?

A Yes.

Q The entrance to the new building which was developed as part of the development of Site 24, that would be directly opposite Site 30, which is the subject of this litigation, is that right?

A That's correct.

Q So that the school entrance would be directly across from the Site 30 entrance?

A Yes.

Q I show you a copy of Plaintiffs' Exhibit 14 and ask if this is the contract that Trinity relied upon in committing itself to the project and the urban renewal plan

as contained as part of that contract? I show you Exhibit 114.

A Yes, this is the document.

Q It is. Now, on your cross examination you were questioned about whether or not the development of housing on air rights above the school was a better arrangement for building a school addition or whether it would have been better to build a school facility without the air rights, and counsel did not permit you to explain that. Would you tell us what you had in mind?

A By "air rights" do you mean the apartment house?

Q The apartment house.

A Yes. The apartment house was an advantage to Trinity in several respects. First of all, the building site was zoned for residential housing, and if we were to get a new school building with some commercial developer having that site, the buildings were so intermingled that it would be foreseeable endless difficulty between the school underneath this apartment tower, which shares water entrances, steam entrances from the street, etc.

So from a practical, long-term point of view, it just seemed most feasible.

Secondly, one of the difficulties the school has in recruiting first-grade faculty is housing. It has at all times been understood with the City that in some number

up to, say, fifteen or so, Trinity would be allowed to have apartment spaces for faculty members, and that has been the case. It has been of value in recruiting and holding faculty.

Of course, it is desirable to the school to have people who live there immediately adjacent to their work. It means that they are available for sometimes night and extra projects or on the weekends when they otherwise might have resistance to participating. That has been of great value to us.

Thirdly, the decision ultimately was made by the school that it wished to make its contribution to the West Side Urban Renewal Area. If it was going to say, it should stay first class and do the best job it could. That has been a premise underlying everything we have done and it is the policy of the school.

Q Is that it?

A Yes. It has not proven to be an economic real estate investment and it was not foreseen as such. It never has been. The school never thought this was a wise use of money if it had other choices as to how it would use its endowment or other funds.

Q You testified on cross examination to several of the projects surrounding Site 24, and you characterized

them as middle income public housing. You meant middle income Mitchell-Lama housing, didn't you?

A Yes. If I used middle income public housing, it was incorrect.

MR. MORRIS: May we request that the record be corrected to that extent?

THE COURT: I don't know if he said it at that time.

MR. MORRIS: He did say it.

THE WITNESS: I don't recall saying it.

Q You said several times middle income public housing. I think you meant middle income Mitchell-Lama housing.

THE COURT: The point is he did say it. It has to remain that way. He has corrected it by his testimony. I can't strike anything under those circumstances.

Q Now, with respect to the financing of the school by Trinity, would you tell us how the Trinity School arranged for the financing of the school part of the combined building?

A It took a private mortgage for $1,250,000 with a savings bank, as I testified yesterday. That mortage has no government assistance behind it, no government guarantee, and it is, therefore, an obligation of the

with respect to those.



trustees of that school to pay off that mortage.

One of the calculations the school made was by having a larger physical facility it could therefore have a larger student body, and we made an economic projection which showed if the student body went up by 250 students from roughly 500 to roughly 750, we could thereby finance that mortgage, and that mortgage is in no way something that the trustees can look to anyone else to bail them out with in any kind of public program.

That is a material consideration to the trustees because they not only have to therefore have students attracted, they and their parents, to the school facility, but to the neighborhood as well.

Q If the neighborhood should change as a result of which the school loses students, would that seriously affect the financial investment of the school?

A Obviously.

MR. GOLD: I object to the form of the question. Mr. Morris is drawing a conclusion in the question.

MR. MORRIS: I am asking him a hypothetical.

THE COURT: I don't quite get Mr. Gold's point.

MR. GOLD: He is saying if the neighborhood should change, resulting in a loss. We don't know that a neighborhood change would necessarily result in a loss.

underway or completed as of October, 1969.



THE COURT: I will take the answer for what it's worth.

What is your answer?

A Obviously, yes.

THE COURT: Next question.

MR. MORRIS: That's all.

THE COURT: Anything occur to you in light of what has developed?

MR. LAND: Before that, may I confer with counsel?

THE COURT: Yes.

(Pause.)

MR. LAND: Your Honor, just a very few questions.

THE COURT: All right. Just bear in mind that the witness has been waiting, really, and we have interrupted so much of his time. Equally important, if not more so, is that Mr. Morris has an engagement up at the Appellate Division.

MR. LAND: I will be done in ten minutes.

RECROSS EXAMINATION

BY MR. LAND:

Q Prior to the time the Trinity School and Housing Corporation entered into the contract known as Plaintiffs' Exhibit 14, was the matter presented to the trustees for their approval?

A You mean as to signing the final document?

Q Yes.

A Oh, yes, and it had been before the board obviously for many years for the expenditure of money for architects and planning monies, etc.

Q So that the authority of the plaintiffs in this action to enter into a contract came as a result of a resolution by the trustees of the plaintiffs as opposed to some unilateral action by yourself?

A Oh, of course.

Q At the time Mr. Mollen made the alleged statement to you "You may rely upon the plan," at that time did you ask Mr. Mollen to reduce that statement to writing?

A No, we did not.

Q Did you ask him at any subsequent time to reduce that statement to writing?

A Did I personally?

Q Yes.

A No, I did not personally so ask him.

Q He made that statement to you, did he not?

A He made it. I believed it.

Q To whom else did he make that statement?

A Glover Johnson, chairman of the board.

Q Do you know whether or not --

A Plus all the other people who were there, which included our counsel, Demov and Morris.

Q Do you know whether any other person who represented Trinity to whom that statement was made asked Mr. Mollen to reduce that statement to writing?

A I do not so know.

MR. MORRIS: I will object to this line of questioning. The statement was reduced to writing in Plaintiffs' Exhibit 14, which is in evidence, which is the contract, and all of the discussions during this period contemplated that the parties would enter into a written contract and that is the writing.

THE COURT: But that doesn't prohibit him from asking the question: Nevertheless, did any of you representing Trinity at these conferences with Mr. Mollen ever say to him, "Won't you please, since it is such an important thing you are saying and we are going to rely on it, won't you please put it in writing?"

That is all he is asking him.

Is that not so?

MR. LAND: It is, your Honor.

THE COURT: According to your testimony, Mr. Lumbard, no one made that request, to your knowledge?

THE WITNESS: To my knowledge.

will be this morning. I have had a terrible time getting

THE COURT: All right.

Q Did you make a request to any other City official acting for or in behalf of Mr. Mollen or any other agency of the City involved with this project to reduce the statement, "You may rely upon the plan," to writing?

A Subsequently by inadvertence one of our trustees was the Corporation Counsel of the City of New York, Mr. Tenney, now Judge Tenney. This was discussed with him, and he simply said, "Of course you can rely on this."

THE COURT: You can rely on his statement?

THE WITNESS: That's correct. He is also a graduate of the school.

Q Could you give us the circumstances of that conversation with the now Judge Tenney?

A There were several such over a period of time by simple at or around board meetings when the project would be discussed by people. If you are looking for a date, I cannot give you a specific date, but the fact that he was what he was was obviously known to us.

THE COURT: By "he" you mean --

THE WITNESS: Mr. Tenney.

Q In other words, Mr. Tenney in or around the period 1963 through -- I am not sure when he became appointed or left the Corporation Counsel's office.

Now won't you please go forward.

called

A I do not recall the date either. He resigned from the board subsequently when he became a judge.

Q In this period during the mid-1960s, Judge Tenney was both a trustee of Trinity School and the Corporation Counsel for the City of New York?

A That's correct.

Q And in his capacity as Corporation Counsel of the City of New York, is it your testimony that he told you that you may rely upon Mr. Mollen's statement that you may rely upon the plan?

A No, it is not my testimony he said those words involving Mr. Mollen. What I am saying to you is that over a period of years Judge Tenney was on the board, heard discussions, conversations were had by him amidst the board, as one might expect, and, indeed, in fact happened, and that occurred.

Q And what occurred?

A It was discussed with him amidst the trustees. All the trustees would be sitting around discussing the project and there would be questions about what of Mitchell-Lama, one or another things. The issues would be discussed.

Q In other words, at a board meeting of Trinity School, Mr. Tenney said, "As Corporation Counsel of the City of New York, I can tell my fellow trustees in effect

Q So you have lived there a little in excess of you may rely upon the plan?

A Mr. Land, I would not say Judge Tenney ever said anything in such a formal fashion. That is not the way things occur at a board meeting.

He has known some of these people practically all his life, and he is sitting there having a conversation with them and he does not say "As Corporation Counsel," etc.

Q I am trying to understand how the board directors or the trustees of Trinity came to rely upon this oral representation made by Mr. Mollen.

A Well, it was said by Mr. Mollen. That was reported to the board by Mr. Johnson and myself. Subsequently there were very many reports to the board, very many discussions. Judge Tenney is sitting there. He is participating or hearing.

Q Yes?

A And I cannot now say on a certain date he said X, but that is the substance of his position to us as a board. He was party to these discussions and knowledgeable about them over a period of years.

Q During the course of any of the board meetings at which this oral representation or similar oral representations were discussed, did anyone ask the question: "Will someone please have this statement reduced to writing"?

THE COURT: You have already covered that. I allowed you to ask it and he has answered it.

MR. LAND: I am asking now at the board meetings.

Q At any board meeting did someone say to the effect: "It might be a good idea to reduce this to writing"?

THE COURT: Was that said?

THE WITNESS: No. No one thought it needed to be.

THE COURT: What you are telling us is, as you best recall, the statement by Mollen that we have been spending so much time on was discussed by the trustees of Trinity?

THE WITNESS: That's correct.

THE COURT: And that, as it would be natural, one of them would say, "Who is this guy? Can you count on him," something like that, is that so?

THE WITNESS: That's correct.

THE COURT: You are saying to us that in the discussion Judge Tenney said, "He's all right. You can take his word," words to that effect; is that what you are saying?

THE WITNESS: That's correct. He reassured us.

THE COURT: Is there anything else?

MR. LAND: That's it.

THE COURT: Anything else?

MR. DOUW: One question.

RECROSS EXAMINATION

BY MR. DOUW:

Q Mr. Lumbard, I refer to Plaintiffs' Exhibit 33 which is a list of trustees of Trinity in about 1967, 1968, and I wonder if you could tell us what the present board of trustees of Trinity is today.

A Who is on the board?

Q Yes.

A Glover Johnson died recently and Otto Kinzel is now the acting head of the board of trustees.

If you have that list, it will help the court reporter with the name spelling.

THE COURT: What else?

A Do you want just their names or what they do?

MR. DOUW: Your Honor, I can make a suggestion. If Mr. Lumbard could provide the list through counsel, that would be satisfactory as far as I am concerned.

MR. MORRIS: The present list of trustees?

MR. DOUW: Yes.

MR. MORRIS: We would be glad to furnish that.

THE COURT: Anything else, gentlemen? I am more concerned about honoring my commitment to counsel so he can go about his job with other tribunals.

Are you all set now?

Very well, you are excused, Mr. Lumbard. Your testimony has been completed, and I hope hereafter you will bear in mind as a lawyer the trials and tribulations and ordeal of witnesses is not as easly as you thought after your own personal experience. No comment from you. Otherwise you will open up another comment from me.

(Witness excused.)

THE COURT: Very well. We will adjourn, gentlemen, until tomorrow morning at 10:00 o'clock sharp.

(Adjournment to 10:00 A.M., April 25, 1974.)

mun court. Wait please, Mr. Morris. What



WITNESS INDEX

| Name | Direct | Cross | Redirect | Recross |
|---|---|---|---|---|
| Eliot Lumbard (Resumed) | 1083 | 1146 | 1160 | |

EXHIBIT INDEX

| | Identification | In Evidence |
|---|---|---|
| Government | | |
| I | | 1078 |
| Plaintiffs | | |
| 34 | | 1079 |

TRINITY EPISCOPAL SCHOOL CORP., et al

and

ROLAND N. KARLAN, et al

against

GEORGE ROMNEY, et al

71 Civ. 4315

April 25, 1974
10:00 A.M.

(Trial resumed)

THE COURT: Won't you please proceed, Mr. Morris.

MR. MORRIS: Yes, your Honor.

At this point I would like to clean up the matter of two exhibits that were marked for identification subject to checking by Mr. Gold with the City records, two maps.

THE COURT: What have they been marked heretofore?

MR. MORRIS: They have been marked for identification.

THE COURT: What numbers?

MR. MORRIS: Numbers 30 and 31.

Mr. Gold is now prepared to make a statement

A Yes.



with respect to those.

THE COURT: Mr. Gold?

MR. GOLD: Yes, your Honor. With respect to Plaintiff's Exhibit 30 marked for identification, some controversy arose over the date of the map, as you recall, sir, and I have no objection to it being marked for identification --

THE COURT: It has been marked for identification.

MR. GOLD: I want to explain what the map represents and I have no objection, I should say, to it going into evidence so long as we all know and qualify it in terms of what it represents.

The 1/73 date which appears in the lower right-hand corner represents only a date of printing of the map. It bears no relationship to the status of anything shown on the map. The last date which has some bearing on the map or the property stated in the area is October, 1969. So that this map represents the West Side Urban Renewal area parcels in terms of those which have been set aside for rehabilitation and conservation and those shaded differently which have been cleared and those which are surrounded by a dotted line which represents new construction or rehabilitation

the City would continue with what they had been committed underway or completed as of October, 1969.

With that qualification, and Mr. Morris I think agrees it is so, I have no objection to Plaintiff's Exhibit 30 going into evidence.

MR. MORRIS: I have been informed by Mr. Gold that this represents the most recent map published by the City with respect to the situation in the West Side Urban Renewal area.

THE COURT: Is that so, Mr. Gold?

MR. GOLD: As I understand it, yes, sir.

THE COURT: Very well.

Mark it, Mr. Clerk.

(Plaintiff's Exhibit 30 was received in evidence)

xxxx

THE COURT: Now 31 for identification.

MR. GOLD: With respect, your Honor, to Plaintiff's Exhibit 31 for identification, this is a map entitled redevelopment areas land use with a date on it dated March, 1966. It has on the original exhibit certain parcels or sites outlined in red marker. Those sites outlined represent the ten sites in the area, ten residential sites in the area, which still are to be completed, in other words, no work has taken place and they are now sites undone.

gwjw

With respect to one site on the map, which is Site 39, which appears on the north side of 89th Street between Columbus Avenue and Amsterdam Avenue, that is a commercial and not a residential site and, therefore, Mr. Morris has agreed that that will not appear for his purposes on this map as outlined in red.

The title of the map, redevelopment areas land use map, bears no relationship to the red lining which appears on the map so that, as I understand it, Mr. Morris is introducing this particular map on ly for the purpose of showing the area outlined in red as sites on which no work has been done, and he has so indicated to me this morning. For that purpose, I have no objection to it going into evidence.

MR. MORRIS: May I also state for the record that this is the most recent presentation of that situation that is available from the City.

THE COURT: Is that so, Mr. Gold?

MR. GOLD: Yes, of the fact that the ten sites so outlined have had no work done on it.

Let me add one more thing, your Honor, which goes to clarify something else.

Site 23, which appears outlined on this map,

He said it was just a matter of time before the develop-



is between West 92nd and West 93rd Street, Columbus Avenue and Central Park West. Out of Site 23 I am advised by HDA they have carved three lots on the West 93rd Street side closest to Central Park West for a rehabilitation project which is now called West Side I, and that is funded by the federal government. It will contain approximately 52 units in two buildings to be rehabilitated. The balance of Site 23 is still undone.

THE COURT: Very well. Mark it in evidence as 31 in evidence.

(Plaintiff's Exhibit 31 was received in evidence)

xxxx

THE COURT: All right, Mr. Morris.

MR. MORRIS: Now I call upon Mr. Gold to advise the Court as to the situation with respect to the figures --

THE COURT: The schedules.

MR. MORRIS: The schedules, yes, your Honor -- that he had indicated previously would be available for this morning.

MR. GOLD: The schedules will be available hopefully sometime later this morning, your Honor.

THE COURT: Very well.

MR. GOLD: Certainly it will be in the hands

plan?

of Mr. Morris before the end of the day. I hope it will be this morning. I have had a terrible time getting some of these numbers together but I think they are together.

THE COURT: Very well.

MR. DOUW: Your Honor, may I make one statement? It may almost be a moot point. The record indicates I represented to you that as to the subpoena duces tecum on Mrs. Thomas, all of the documents called for would be delivered if Mr. Morris so required. My understanding with Mr. Morris is that if Mrs. Thomas was called to testify it would only be with respect to the information that is covered by those schedules if for some reason we shouldn't be able to stipulate to those schedules. I don't think that is going to be the case. I think we will be able to. But the documents that she would bring with her would relate only to that particular subject matter. That is a more manageable proposition.

The subpoena duces tecum is broader than that. The record appears to show that I indicated to the Court that all documents would be delivered this morning.

THE COURT: Is that satisfactory, Mr. Morris?

MR. MORRIS: That is satisfactory.

plan?

THE COURT: All right.

Now won't you please go forward.

One word on the schedules. Haste makes waste. I have to listen to counsel. I have to accept their statements to the Court as officers of the Court and no one has deplored more than I the almost intolerable lack of craftsmanship and a sense of responsibility that has invaded all areas of operational life throughout the country. You have breakdowns in typing, stenograph, printing. Usual services that we all counted on are no longer available. Hence the Courts are crowded with cases of dreadful happenings due to inexcusable carelessness and indifferences.

That's a long speech but when you get those schedules, you have to state, "Judge, this is it."

I don't want any backing and filling. I want a cleancut statement that this is what the Court can rely on and, therefore, if they come in this morning and they do not meet what you think is required under your pledge to the Court, you should speak up. I want Mr. Morris to have the benefit of these scheduled over the weekend or possibly this evening so that he can go forward with his proof tomorrow, if possible.

All right.

Q Would you describe the condition of the

gwjw

MR. MORRIS: Mr. Hudgins.

A L V I N C. H U D G I N S , called as a witness, first being duly sworn, was examined and testified as follows:

THE COURT: Mr. Hudgins, you are very fortunate in having a voice that carries. That's good because the accoustics here are miserable. Would you be good enought to remember you are a witness giving sworn testimony and that you cannot go on into arguments unless you are asked for an explanation. Wherever possible, your answer is supposed to be yes or no.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Hudgins, what is your occupation?

A I am a marketing man with Aetna Life and Casualty.

Q And where do you live, Mr. Hudgins?

A 29 West 94th Street, New York, New York.

Q And is that located in the West Side Urban Renewal area?

A Yes, sir.

XXXX

Buildings?

Q And how long have you lived at that address?

A Since March of '72.

tion of these brownstones?

Q March of 1972?

A That's correct.

Q So you have lived there a little in excess of two years at the present time?

A That's correct.

Q Does that address represent the address of a rehabilitated brownstone in the West Side Urban Renewal area?

A Yes, it does.

Q Do you have one or two buildings?

A I have two buildings.

Q You have two buildings which you rehabilitated?

A That's correct.

Q Would you give us the address of the two buildings?

A 27 West 94th Street and 29 West 94th Street.

Q Are they contiguous buildings?

A Yes, they are.

Q Would you tell us where you lived before you moved into the West Side Urban Renewal area?

A The address was 112-70 175th Place, St. Albans, New York.

Q Is that St. Albans in Queens?

A That's correct.

Q Is that generally called the Adsleigh Park area?

A Yes, it is.

Q How long had you lived there?

A Approximately 18 years.

Q 18 years?

A That's correct.

Q When you moved there was that an integrated area?

A Yes, it was.

Q Did it remain integrated throughout the period that you lived there?

A No, it did not.

Q Tell us what happened with respect to that area?

A Well, the economic complex of the community changed.

MR. LAND: Your Honor, I would object to the testimony of this witness on economic complex unless a foundation is properly laid.

MR. DOUW: I object to its relevance.

THE COURT: Yes, how is it relevant?

MR. MORRIS: We are setting the stage for why Mr. Hudgins moved into the West Side Urban Renewal

area.

THE COURT: Ask him outright what prompted that.

Q Why did you move into the West Side Urban Renewal area?

A Because I saw the community deteriorating.

Q Which community?

A Where I lived.

Q Adsleigh Park?

A That's correct.

Q Yes.

A And I felt I wanted a better home for my family in an area that I considered ideal.

THE COURT: All right, next question.

Q Did you actually look over the area and examine what had been happening in the West Side Urban Renewal area before you made your commitment to rehabilitate these brownstones?

A Yes, I did. I had the advantage of having a father who had moved into the area, who was the first person to purchase a building from the City, one of the brownstones, so I had watched the area develop.

THE COURT: What was the address of the property that your father acquired?

THE WITNESS: 51 West 94th Street.

THE COURT: Thank you.

Q That is the same street that you are on?

A That's correct.

THE COURT: About when did he acquire it?

THE WITNESS: Approximately 1965.

THE COURT: Thank you.

Q He had been living in the area during that period?

A That's correct.

Q And in the course of his living in the area, did you have occasion to visit the area?

A Many times.

Q Were you familiar with what was occurring in the area with respect to its rehabilitation under the provisions of the Urban Renewal plan?

A Yes, I was.

Q What did you observe about the area during those periods prior to the time that you made your commitment with respect to this brownstone?

A I observed a very delightful rehabilitation of the area and --

THE COURT: That is almost meaningless.

Q Describe it?

THE COURT: Wait, please, Mr. Morris. What did you observe? That calls for facts.

A Right. I observed buildings being rehabilitated and buildings, large high-rise buildings being constructed.

Q Did you observe whether the area was being integrated or not?

A Yes, I did.

Q Was it?

A Yes, it was.

Q Was it being integrated in a manner which you felt was such that you would like to live there yourself?

A That's correct.

Q You thereupon made your commitment to acquire a brownstone, is that right?

A That's correct.

Q Would you tell us about when you started your negotiations for the particular brownstones that you acquired?

A In early 1970.

Q In early 1970?

A That's correct.

Q What did you do when you made your commitment to these brownstones, would you tell us what occurred?

2 Q Then did there come a time when you were prepared

A Yes. I met with William Decker Clark and told him that I had an interest in the area and asked if it would continue on the basis that I had been told by my father that it was being developed.

THE COURT: Who was Clark?

THE WITNESS: He was one -- he worked for the City of New York, sir.

THE COURT: Do you remember what position he held or what he represented he held?

THE WITNESS: HRA. He was in charge of this program.

THE COURT: Very well.

Q Did you say HRA?

A I think that is it, sir.

Q What does that stand for?

A Housing Redevelopment Administration.

Q HRB?

A Yes.

Q Housing Redevelopment Board?

A That's correct.

Q Or was it the HDA, which took over from the HRB?

A I am not familiar with the initials.

Q That confuses you, doesn't it?

A No, I don't.

A Yes.

THE COURT: There should be no doubt as to who this gentleman was. We don't have to spend time on that. Was he a public official at the time?

MR. MORRIS: Yes, he was.

THE COURT: What position did he hold?

MR. MORRIS: He had charge of the rehabilitation of brownstones in the area at the time Mr. Hudgins is speaking of.

THE COURT: That time is what again, please?

THE WITNESS: Early 1970, late 1969, sir.

THE COURT: Thank you.

Q Would you tell us about your discussions with him with respect to the nature of the area and what was contemplated to be done under the Urban Renewal plan?

THE COURT: Make it as complete as you can. What did he say, what did you say?

A Yes, sir.

THE COURT: Don't sum it up in the sense that you are giving us your evaluation. Tell us what was actually said. I don't expect you to remember the words exactly, but the substance. He said to me and I said to him, you see.

A I questioned Mr. Clark as to whether or not

THE COURT: Please proceed, Mr. Morris.

the City would continue with what they had been committed to do because I doubted it very seriously initially when my father made his purchase. In fact, I criticized him because I did not think that the program would come off.

THE COURT: Is that what you said to Mr. Clark?

THE WITNESS: Yes, sir.

THE COURT: Yes.

A And he assured me --

THE COURT: What did he say?

A He said to me, he said, look Al, you have no concern, this will remain ~~a 70~~/30 ~~economic mix~~ area. There has been a great deal of talk about racial integration. That does not concern me at all.

THE COURT: Is that what he said to you?

THE WITNESS: No, I am saying that to him.

THE COURT: Yes.

THE WITNESS: I said, the main thing that I am interested in is that we have a community that has the economic mix, because it is a funny thing in America, dollars seem to equalize everything, and that is what I was concerned in having the kind of community to rear my family in.

Bill assured he that this would hold true and

I then proceeded to acquire the buildings.

THE COURT: Is that the whole conversation that you had on that occasion?

THE WITNESS: That is the essence of it, your Honor.

THE COURT: Thank you. Where was this conversation held?

THE WITNESS: In his office.

THE COURT: Where?

THE WITNESS: At 100 Gold Street.

THE COURT: Who was present besides you and this gentleman?

THE WITNESS: No one, sir.

THE COURT: Very well.

Q Did you also have occasion to observe or be informed about a situation with respect to squatters in the West Side Urban Renewal area?

A Yes.

THE COURT: Yes is the answer. Next question.

Q Would you tell us what occurred with respect to that?

A In that same conversation, sir, I had asked him whether or not the squatters would be moved out because there had been some in the area in the block that

exhibits mentioned in the contract that are not included.



my father lived and he assured me that they would. He said it was just a matter of time before the development proceeded.

Q Did you also have discussions about what was going to happen with respect to the areas of the West Side Urban Renewal project that had not as yet been developed?

A I was shown a map of the way the various developments would be and that it would proceed rapidly.

Q As a matter of fact, I show you this map.

THE WITNESS: Is this the one, sir?

MR. MORRIS: Yes, do you have the map?

THE WITNESS: There is one right here.

MR.MORRIS: Can I see that, please?

THE WITNESS: Surely.

MR. MORRIS: No, this one is not in evidence. I want to show you one in evidence.

Q I show you this map marked Plaintiff's Exhibit 31 and ask if this was the map, without the red markings that are on it, but is this the map that you were shown when you looked at the area?

A It does look -- yes, it looks like the one, sir. I believe it is.

Q This is what you were shown when you discussed

is annexed hereto, made a part hereof and made Exhibit D



the question of the completion of the Urban Renewal plan?

A That's correct, sir.

Q Were you assured that the sites which were scheduled for redevelopment would be redeveloped?

A That's correct.

Q Did you rely on that in entering into your contract for the rehabilitation of the brownstones?

MR. LAND: Objection, your Honor. He mentioned about entering into a contract. We should have that contract to see in fact what he did rely upon.

THE COURT: Are you going to introduce the contract?

MR. MORRIS: Oh, yes.

THE COURT: I will allow the question in light of the fact that the contract is going to be introduced. Go on.

A Yes, I was told that it would be a 70/30 economic mix in the area.

Q Did you thereupon decide to go ahead with the rehabilitation of these brownstones?

A Yes, I did.

Q What did you do; did you look over the buildings?

in the contract, from the City?



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A Yes, I was told that it would be a 70/30 economic mix in the area.

Q Did you thereupon decide to go ahead with the rehabilitation of these brownstones?

A Yes, I did.

Q What did you do; did you look over the buildings?

Q So that you never received a copy of that,

A Yes, I did.

Q Would you describe the condition of the buildings at the time you looked at them when you first contemplated making an acquisition?

A They were in very, very bad condition.

Q Would you describe the condition for the Court?

A Surely. They had been vacant for approximately four or five years and they were tinned up and Mr. Hunter, Bill Hunter --

Q Also of the HDA?

A Whatever the initials are, sir, HDA, yes, of the HDA accompanied my wife, my architect and myself to the buildings and we examined them.

Q Did he show you through the buildings?

A And through the area also.

Q And through the area as well?

A That's correct.

Q Would you tell us what you observed when you were shown through the area by Mr. Hunter?

A I saw construction going on and I saw the type of community that I had been told would exist. This was in late '69 or early '70.

Q Would you tell us what the particular building

was like, would you describe the building or the two buildings?

A Yes, there were no lights, of course, and it was completely gutted, nothing of any value was there, merely a shell.

THE COURT: That describes it, does it, merely a shell?

MR. MORRIS: Yes, I think so.

THE COURT: All right.

Q Did you then have counsel at that time?

A Yes, I did, sir.

Q Did you along with your counsel then enter into any negotiations with the City for the acquisition of the property?

A Yes, on April 27, 1970 I signed a letter of intent with the City of New York.

Q Do you have a copy of that letter of intent?

A Yes, I do, sir.

Q May I see it, please?

A I have it back at the bench. Thank you. This is the letter of intent, sir.

Q Would you give us the date of the letter of intent?

A Yes, it is April 27, 1970.

moment?

Q That is the letter of intent that you signed at the time you decided to go ahead with the rehabilitation of these brownstones?

A That's correct, sir.

MR. MORRIS: Now, your Honor, there are several documents, the letter of intent and then the contract and so forth, all of which are included in this closing statement, which Mr. Hudgins has produced, and I think it would be helpful to all if we introduced them as a single exhibit so I will take him through the various documents and then over the entire exhibit into evidence.

THE COURT: If you dont mind. Let the first one contain the exhibit number and the others will be that number, A, B, C and D.

MR. MORRIS: I will offer it for identification, your Honor.

THE COURT: All right.

MR. MORRIS: At this time, your Honor, I offer for identification a statement as to closing of title in connection with the purchase of premises 27 and 29 West 94th Street for Mr. Alvin Hudgins.

THE COURT: The letter being dated?

MR. MORRIS: The first letter of intent being dated --

THE WITNESS: It is on the last page, sir, April 27, '70.

THE COURT: All right, will you mark that?

MR. MORRIS: April 27, 1970.

THE COURT: All right, will you mark that for identification, please, Mr. Clerk. Just that letter.

(Plaintiff's Exhibit 35 was marked for identification)

xxx

Q In this letter of intent, what did you undertake to do --

MR. GOLD: Your Honor, excuse me, may we see it?

THE COURT: If you wish to examine it, you may.

MR. GOLD: May we have a couple of minutes?

THE COURT: Of course.

(Pause.)

THE COURT: Mr. Morris, he has a problem with regard to certain papers and I told him to take it up with you.

MR. MORRIS: Yes.

Mr. Gold, I would like to separate that.

MR. LAND: Your Honor, this offer of proof we are going into right now may be obviated if we can get right to the contract of sale and if the contract of sale contains language similar to the language contained in Mr. Karlan's contract, which you recall he testified to last September, I believe it was Section 110 of his contract, which said to the effect, the contract of Mr. Karlan said to the effect that all understandings and agreements heretofore had between the parties are merged in this contract and the written agreement constitutes the full agreement between the parties, if there is a similar clause in Mr. Hudgins' contract, then we can eliminate the need to go through all the

eo2 Hudgins-direct

prior oral statements and writings and look just to the final document, which would be the one which governs this case.

MR. MORRIS: Your Honor, I respectfully submit, as I have several times before, that there is more involved in the case than the mere document itself. The circumstances surrounding the entry into the document are directly relevant in this case, and they are what we are relying on as we have in all the other situations and we do in this one as well as the other ones to which the same remark has been addressed.

THE COURT: I am inclined to go along with Mr. Morris' explanation as to why this is relevant and, accordingly, I don't know whether there is a motion before me, but if you are moving for an instruction by the Court that the plaintiff may not develop these things and must rely exclusively on the written contract, without any oral testimony of the kind that has been going on, I disagree with you and I am going to receive it.

MR. LAND: For the record, we make a motion to exclude any testimony other than what is in writing and we make that motion.

THE COURT: Certainly. At this time, until we see reason to change our position, your motion is denied.

Now, what we have before us is the last document that was marked for identification as 35 and let's hear what counsel has to say. Are you offering it? You didn't say so, Mr. Morris.

MR. MORRIS: No, sir; not yet.

MR. LAND: No objection.

THE COURT: It is not being offered just yet. You chose to request to look at it and we said, Go ahead. You have looked at it. Now, let's go on with the questioning.

Q Mr. Hudgins, what followed the execution by you of this letter of intent?

THE COURT: Referring to? Please, always.

Q Referring to Plaintiffs' Exhibit 35 for identification?

A My architect proceeded with working drawings to be accepted by the City of New York.

Q Did you have conferences with the City of New York with respect to the manner of rehabilitation of the property?

A Yes, I did. The plans, everything I did had to be approved by them.

Q Everything that was done was approved by the city?

A Yes, sir.

Q Then did there come a time when you were prepared to enter into a contract of sale for the property?

A Yes, there was.

Q Did you enter into such a contract?

A Yes, I did.

Q Do you have a copy of that contract?

A Yes, I do, sir.

THE COURT: Will you mark that for identification?

MR. MORRIS: I ask it be marked for identification.

THE COURT: As what?

MR. MORRIS: Contract of sale as of February 11, 1971 between Hudgins and the City of New York.

THE COURT: Would you like to have that 35-A for identification; is that it, Mr. Morris?

MR. MORRIS: Yes, I would think so.

THE COURT: 35-A, Mr. Clerk, please.

******** (Plaintiffs' Exhibit 35-A marked for identification.)

MR. MORRIS: Do you want to look at it now?

MR. GOLD: Please.

(Pause.)

Q Do you have copies of that, Mr. Hudgins?

A What is that, sir?

Q Do you have copies of the contract?

A No, I don't.

MR. MORRIS: That is the only one. We will get copies for you.

MR. GOLD: Your Honor, I have no question in my mind that this is the actual contract. However, I draw the Court's attention to page 5 of the contract, Section 106, which lists several items that are made part of the contract as exhibits and those I do not see attached to this, so what we are looking at I do not think is the whole document.

THE COURT: Very well. Will you correct that, please, Mr. Morris?

MR. MORRIS: Yes.

Q Do you have additional exhibits or documents that came with it?

THE COURT: Do you understand what counsel just said?

THE WITNESS: I think I do, sir.

THE COURT: See if you can't find what was attached and made a part of the contract with the city.

Gentlemen, will you come up to the bench right around here, please. Come into chambers for just a moment.

Mr. Court Reporter, you don't need to come.

(Recess.)

THE COURT: Next. Does that complete all of

T3-AM



THE COURT: Please proceed, Mr. Morris.

Have you got those attachments to Exhibit 35 for identification?

MR. MORRIS: Yes.

BY MR. MORRIS:

Q Mr. Hudgins, in addition to the contract of sale, did you receive some additional papers that were annexed as exhibits to the contract of sale?

A No, I did not.

Q I mean these.

A These, yes.

Q These were annexed to this as well?

A That's correct.

Q Is that all you received when this contract was made?

A That is all.

Q T he contract refers --

MR. LAND: What is the "these" you are referring to?

THE COURT: Yes, they ought to be marked, Mr. Morris, 35A(1), (2).

MR. MORRIS: I was going to suggest these should be marked all as part of 35A.

THE COURT: Those few pages which were annexed

new floors, new wiring, new plumbing.



how many pages are there?

MR. MORRIS: Twelve or fifteen pages.

THE COURT: Would you mind having the clerk mark it at this juncture as 35A(1).

xxx (Plaintiffs' Exhibit 35A(1) was marked for identification.)

MR. GOLD: Mr. Morris just showed these to me. I don't know whether it is a good idea to have them together. There is a deed, there is a property transfer tax return --

THE COURT: Have you any objection to any one of them? They are relevant, are they not?

MR. GOLD: I have no objection.

THE COURT: He puts them in as one group, although we really should know what was the contract in toto. It consisted of so many pages of the main contract and attached thereto were so many pages of such and such material made a part of the contract and just as much a part of it as though recited in the body thereof.

Can we get it that way?

MR. MORRIS: Before we do that, your Honor, I must point out that some of the exhibits which are referred to in the contract itself were never delivered by the City to Mr. Hudgins, and I wanted to elicit testimony as

to that, about what the situation is with respect to exhibits mentioned in the contract that are not included.

THE COURT: Mr. Morris, you go ahead and do whatever you think you ought to until you are stopped, but you don't seem to get what I am after.

Right now I want to know what you contend was a part of the total contract that Mr. Hudgins signed. First you offered him the body without the attachments. Then we went into the issue of what were the attachments. Now it seems that the attachments also include material that was not really a part of that contract.

So I want to get the record clear so that anybody reading the record can know exactly what it is that you maintain was the complete contract and what was not a part of the contract. All right? Would you do that first so we know what we are talking about?

MR. MORRIS: Yes, your Honor.

THE COURT: If you don't mind.

BY MR. MORRIS:

Q Mr. Hudgins, the contract which is Plaintiffs' Exhibit 35A for identification dated February 11, 1971, contains on page 5 thereof the following statement:

"It will be made subject to the following:

"(a) All the terms and conditions of the contract

between the City and Federal Government, a copy of which is annexed hereto, made a part hereof and made Exhibit D as may be applicable."

Now, was there annexed to this contract, when you received it from the City of New York, a copy of a contract between the City and the Federal Government?

A No, it was not.

THE COURT: Nevertheless you signed it?

THE WITNESS: Yes, your Honor.

THE COURT: That's all right.

Q Would you tell us what happened? Did you have a discussion with respect to that at the closing with the City of New York?

A Yes, and prior to, with my attorney.

Q What occurred with respect to that exhibit, Exhibit D?

A The original contract, as you noted, was dated in February of '71. It was not until July 15th of '71 that my signature was taken on the contract because there were many things that we tried to get from the City that were stated in the contract would be there.

My attorney advised me that since we were dealing with the City, that we had no concern about these things and I should proceed to sign it.

THE COURT: I don't quite understand that. What



Q Did you receive the Exhibit D which is specified in the contract, from the City?

A Is D the one you just spoke of?

Q That is correct.

A No, I did not.

Q Did you ever receive the one that is designated D as A(1), which I will read from Plaintiffs' Exhibit 35A for identification:

"All the terms and provisions of the contract between the City and the New York State Government, a copy of which is annexed hereto and made a part hereof and marked Exhibit D(1) as may be applicable."

Did you receive any such contract at the time you received this contract?

A No, I did not.

Q And did you have any discussion with respect to the City with respect to what occurred as to that particular contract?

A My attorney asked for it but we never received it.

Q He asked for it while you were there?

A Yes.

Q What did the City people say?

A They said they didn't have it available at the

are served by a common entrance and a common staircase.

time, something to that effect.

Q So that you never received a copy of that, did you?

A No, I did not.

Q You never received it.

I refer to Plaintiffs' Exhibit 35A for identification, and is this the contract complete as to the manner in which you received it from the City?

MR. LAND: Your Honor, this testimony as to the alleged missing documents may raise a question of relevancy. Does Mr. Morris contend in any respect that the absence of these exhibits from the contract has any relevancy at all to his contention in this lawsuit?

MR. MORRIS: No.

MR. LAND: I move to strike all that testimony, your Honor.

MR. MORRIS: I want to explain --

THE COURT: I understand, but I don't know why we go into all of it unless it has some relevancy. Anyway, let's let it stand. Don't add any more to it. Let's go on. If you contend there is no particular significance in the failure to receive these documents mentioned in the main body of the contract, 35A, why do we spend time with it?

was made by you in the rehabilitation of these two buildings



Q After you signed the contract, did a time come when you entered into a deed to the property, a deed of conveyance to the property, from the City of New York to you?

A Yes.

Q I show you this document which is marked Plaintiffs' Exhibit 35A(1) for identification and ask if this is the deed?

A Yes, it is.

Q And is there annexed to the deed other documents relating to approval of the plan and project by the Board of Estimate of the City of New York?

A Yes, it is.

Q Dated February 11, 1971?

A That is correct.

MR. LAND: Is this particular document the witness is referring to marked for identification?

MR. MORRIS: IT IS MARKED 35A(1) for identification.

MR. GOLD: That is what I meant before. We have a deed, we have a resolution of the Board of Estimate, we have a real property transfer tax return.

THE COURT: We will straighten it out this way. Are you offering the main body of the contract?

100,000 or 500,000 to rehabilitate his brownstone.

MR. MORRIS: Yes.

THE COURT: It has been marked what up to this moment?

MR. MORRIS: 35A.

THE COURT: Any objection?

MR. GOLD: No.

THE COURT: Mark it.

xx: (Plaintiffs' Exhibit 35A was received in evidence.)

THE COURT: 35A(1) it now develops consists of papers other than what was annexed to 35A. So please offer them as separate documents and they will take another number because they were not a part or never received, according to this witness, by him. But nevertheless you are offering them in evidence, is that so?

MR. MORRIS: Yes.

THE COURT: What are you offering -- the deed?

MR. MORRIS: Yes, now I am offering the deed.

THE COURT: Any objection to the deed going in?

MR. GOLD: May I see it?

THE COURT: Certainly.

MR. GOLD: Mr. Morris in the past has done it. I have done it in terms of papers he has asked for. If we could have a copy of these documents to look at for

a few minutes --

MR. MORRIS: I will arrange for that.

THE COURT: That was the purpose of the conference. You want him to put it on the record?

MR. GOLD: No, it is not necessary.

THE COURT: Then why do you bring it out? I have to sit here and give you your chance to look at it. It is being offered now.

What are you gesticulating about? Why are you getting yourself into an uproar?

MR. LAND: Not an uproar. We will don't have in evidence Plaintiffs' Exhibit 35 for identification.

THE COURT: Please be patient. You don't have a nodding acquaintance with patience. Reintroduce yourself, will you?

MR. LAND: Yes, your Honor.

THE COURT: There was an error made and we are correcting it. We will straighten it out. If we don't straighten it out, then you holler.

Mr. Gold and gentlemen, when a document is offered with such short notice, for example, and you offer no objection, it will always be distinctly understood that if you find error after an objection should have been interposed, you may make it and may make a motion to

strike.

MR. LAND: Why don't we do that on these documents, your Honor, and save time?

THE COURT: It is up to you. I don't want you to do anything.

MR. GOLD: All right.

THE COURT: With that understanding, Mr. Clerk, it will be marked as 36.

xxx (Plaintiffs' Exhibit 36 was received in evidence.)

THE COURT: Now, Mr. Morris, be good enough to take the balance of what was heretofore marked 35A(1) and offer them as separate documents, will you please.

MR. MORRIS: Your Honor, at this time I offer in evidence Plaintiffs' Exhibit 35 for identification, consisting of the letter of intent to which Mr. Hudgins testified, dated April 27, 1970.

THE COURT: Wasn't that marked?

MR. MORRIS: That was marked for identification.

THE COURT: Wasn't it marked in evidence, Mr. Clerk?

THE CLERK: No, your Honor.

THE COURT: All right, received.

xxx (Plaintiffs' Exhibit 35 received in evidence.)

THE COURT: Now it's in evidence.

What is the balance of what was heretofore marked 35A(1)? Will you complete that right now, please.

MR. MORRIS: Yes. 35, which is now changed to 36.

THE COURT: That is the deed.

MR. MORRIS: Yes.

THE COURT: What other parts of 35A(1) for identification?

MR. MORRIS: Now 36. In addition to the deed, there is annexed thereto a copy of the resolution of the Board of Estimate dated February 11, 1971.

THE COURT: You are offering that?

MR. MORRIS: That is annexed to the exhibit. It is part of it. Calendar No. 8A.

THE COURT: What do you mean a part of the exhibit?

MR. MORRIS: It is annexed to the deed.

THE COURT: It is a part of the deed?

MR. MORRIS: That's right.

THE COURT: All right. So that will be marked 36A.

MR. MORRIS: 36.

THE COURT: Did you not mark the deed itself 36?

MR. MORRIS: Yes.

THE COURT: Did you just now offer what you said was annexed to the deed?

MR. MORRIS: Yes, your Honor.

THE COURT: So that is 36A.

xxx (Plaintiffs' Exhibit 36A was received in evidence.)

MR. GOLD: Your Honor, one more thing. Perhaps we can make it 36B. That is the real property transfer tax return which I do not think was attached to the deed in the normal course.

MR. MORRIS: That is the next document I was coming to.

THE COURT: Will you offer it now.

MR. MORRIS: Yes. I offer the real property transfer tax document as Plaintiffs' Exhibit 36 --

THE COURT: You leave the numbers to the clerk. You are offering that right now. That is being considered as a separate document. You say it was attached to what -- the deed?

MR. MORRIS: Yes, your Honor.

THE COURT: So mark that 36B in evidence, subject to a later motion to strike.

xxx (Plaintiffs' Exhibit 36B was received in evidence.)

THE COURT: Next. Does that complete all of the papers that were marked heretofore 35A(1), Mr. Morris?

MR. MORRIS: Yes, it does, your Honor.

THE COURT: Thank you.

BY MR. MORRIS:

Q After you entered into the various documents, did you proceed with the rehabilitation of the property in question?

A Yes, I did.

Q And how long did that take?

A A little over a year. About 14, 15 months.

Q And when did you go into possession of the property?

A March of '72.

Q And would you describe the nature of the rehabilitation that was made from these two gutted buildings you testified to before?

A When it was complete, we had to replace everything with the exception of a few floor beams which were able to remain.

THE COURT: Mr. Hudgins, you impress me as an intelligent man. How am I going to gather what you did from that statement?

THE WITNESS: All right. We put in new walls,

Q Did you then proceed with the renting of the other new floors, new wiring, new plumbing.

THE COURT: That is telling me something. Go on.

THE WITNESS: Everything was new with the exception of the outer shell.

Q And how many apartments did you create in the two buildings as a result of that?

A Eleven apartments.

Q Eleven apartments?

A That's correct.

Q Do you occupy any of those apartments?

MR. GOLD: Your Honor, may we have a breakdown?

THE COURT: Yes, indeed.

How many apartments in 27 West 94th?

THE WITNESS: Six, sir.

THE COURT: How many in 29 West 94th?

THE WITNESS: Five, sir.

THE COURT: All right, there we are.

Q And do you occupy an apartment in one of the buildings yourself?

A Yes, I do.

Q Would you tell us what building your apartment is in?

A My apartment is in 29.

Q 29?

THE WITNESS: Well, the fact that in many instances



A That's right.

Q West 94th?

A That's right.

Q What does your apartment consist of? Is it a triplex apartment?

A Yes, it is.

Q Are the other apartments, the other tenants in the two buildings, are any of them duplexes or triplexes?

A Four are duplexes.

Q And the rest are simplexes?

A Of the remaining, that would be the remaining six; two are studios, two are one-bedrooms with the bedroom in the extension, that means a small portion in the back; one is a floor through one-bedroom; and one is a floor through two-bedroom.

MR. GOLD: Your Honor, again, may we have where the duplexes and simplexes and everything else is?

THE COURT: He is entitled to it.

THE WITNESS: Yes, sir. The duplexes are in both buildings --

THE COURT: Do you mind doing it this way to be clear and unquestioned: in 27 West 94th the setup is as follows.

THE WITNESS: Very good, sir.

necessarily, but what else would you say?

In 27 West 94th Street the setup is as follows: two duplex apartments, one front, one rear.

Q How many stories in the building?

A There were originally three stories and basement. We added a floor. So there are now four stories and basement.

Back to my testimony.

In 27 there are two duplex apartments, one one-bedroom apartment with a bedroom in the extension, one studio apartment, one one-bedroom floor through and one two-bedroom floor through.

In 29 West 94th Street, there is my apartment---

Q Which is a triplex?

A That is correct. -- there is a studio, a one-bedroom with the bedroom in the extension and two duplex apartments, one front and one rear.

Q Are these apartments occupied?

A Yes, they are.

Q Do you have tenants in all of them?

A Yes, I do.

Q Are some of the tenants white and some black?

A Yes, they are. I don't know how we are ever going to the point where we identify black and white, but nonetheless, to answer your question, yes, they are black

and white.

THE COURT: I don't quite understand that. What do you mean?

THE WITNESS: Here is what I mean.

THE COURT: What has that got to do with the question?

THE WITNESS: The question is how does one identify white and black. I mean my shirt is white. I don't see people who call themselves Caucasians as white, nor do I see people the color of my shoes, which is black, as black, but nonetheless, for the sake of your question, yes, there are blacks and whites in the building.

THE COURT: While you don't agree with that so-called descriptive terminology, will you content yourself with this, that within the common, practical usage of the term, in that sense you are answering yes?

THE WITNESS: Yes.

Q Can you tell us how many persons in the categories we have just discussed are white and black?

A Six are white and four are black.

THE COURT: Would you tell us where they are, in what buildings, and so forth? Take 27 West 94th. What is your answer?

THE WITNESS: In 29 West 94th there are --

MR. DOUW: I wish to make a motion to strike all incidentally, your Honor, to make it clear, both buildings are served by a common entrance and a common staircase.

THE COURT: Thank you very much. That is helpful.

THE WITNESS: In 27 there are three black families and in 29 there is one.

THE COURT: Thank you. Next question.

Central Park West, sir.

Q Now, what was the extent of the investment that was made by you in the rehabilitation of these two buildings including loans that you obligated yourself for as well?

A Approximately 200 --

MR. LAND: Your Honor, we would think the loan would be recorded in some instrument and would speak for itself.

THE COURT: The only thing is, Mr. Land, strictly speaking you are right, but do you want to burden a trial record with alot of exhibits that absolutely are in no contest whatever? Are you going to contest the amount of money that this man somehow arranged to put up for this investment?

When he rattles off a figure, are you going to say that he didn't get a mortgage of such and such an amount? If so, you are perfectly right. Every one of those documents has got to be offered.

MR. LAND: Let me explain my concern, if I may.

We feel there is a lot of irrelevant testimony coming into this trial as to how much money people invested in brownstones, how much it cost for a staircase, et cetera.

We see no relevance to it, but if Mr. Morris wants to put that into evidence, we want it to be accurate.

BY MR. MORRIS:



I don't see what relevance it has whether he paid 50,000, 100,000 or 500,000 to rehabilitate his brownstone.

Obviously, he paid something. The amount isn't relevant, but if he wants to go into it, let's be sure it is right because if he is going to contend later on that Mr. Hudgins is going to lose his investment by reason of what they contend are changes in the West Side area, then we have to be exactly sure how much is invested in that property, if that is going to be his contention.

Is that your contention, Mr. Morris?

MR. MORRIS: Your Honor, my contention is that these people who invested in the West Side urban renewal area, based upon the representations that were made to them. made substantial investments and I only want to make clear to the Court the total amount of those investments without going into any detail because I don't think detail is necessary.

The fact itself of the investment speaks for itself and the manner in which the investment was made in terms of mortgage and who made the mortgage loans and what were the terms and conditions of the mortgage I think have no relevancy whatsoever to this proceeding, but the fact of an investment, of an amount for which the party put up the cash or obligated himself to pay loans I think is a signifi-

cant element and one that should be put into the record.

MR. LAND: We can solve this problem very easily. Is it Mr. Morris' contention in this proceeding that Mr. Hudgins, by reason of any prospective changes in the West Side area, will lose some of his investment? Is that your contention?

MR. MORRIS: I don't know and that is one of the issues before the Court as to whether the situation as it is developing presently as a result of the violation of the Urban Renewal Plan will reach a point which will cause these people to lose their investment.

It may. I don't know. That is one of the matters which we are developing in the course of this trial, but I think the Court is entitled to know what the amount of the investment is and to what extent these people have obligated themselves in reliance upon the representations that were made to them when they made that investment.

MR. LAND: Your, Honor --

THE COURT: Yes, sir.

MR. LAND: If it is Mr. Morris' contention that Mr. Hudgins will lose his investment by reason of changes in the West Side urban renewal area, then we must know the exact amount of that investment. If he contends that is relevant, if he says it is not relevant and just wants to

give a general idea, I have no objection to the oral testimony.

THE COURT: All right. What is your answer? Do you maintain it is relevant?

MR. MORRIS: I maintain it is relevant, your Honor.

THE COURT: At this juncture I have no alternative, as I see it, in light of what has already transpired other than to say that we will receive it subject to a motion to strike.

Gentlemen, I might as well tell you what is going through the judicial noggin so that if I am going off in a wrong direction, it is your obligation to straighten me out.

I am concerned with what was held up by public officials to not only those who were going to make a financial investment in reliance on those representations, but to the man in rags, who hoped to get a chance to live there with his family. I want to know whether he, too, was told this, that and the other which caused him to make certain sacrifices, if not of a financial nature, of an equally important nature to him as a human being.

If he was told that, when you get there, this, that and the other will take place and we want to reassure

you and so forth and that was not lived up to, I want to know about that. I think it has a very important place here.

Here you take this witness on the opposite side. He went over there, after he says he didn't like the neighborhood out in Queens, he comes in search of a place that he thinks will justify his criteria for how to live with a family.

He makes inquiry, he says. That is what he said and he establishes to his satisfaction that there would be this economic -- I think the term he used was economic --

THE WITNESS: Integration.

THE COURT: (Continuing) -- economic integration, 70/30. He was not asked and I will ask him in a moment, because it was not clearly presented in my humble estimation, if these people were made to do things involving personal sacrifices, whether of money or of relationship with other human beings, with a place to live in the sun, whether they are poor or rich or middle class, if it caused them, these representations by city authorities, to change their way of life or their conditions of living, if they were inducements that prompted them to go forward into this area and to possibly give up other notions that they might have entertained at the time, I think it becomes imperative that the Court should be so advised and it has nothing at all to do

with what was the ultimate contract that was entered into.

Both of them have a place in this record. Now, gentlemen, if I am wrong in that, give me the law, give me your arguments and let me rechart my thinking.

Until I am so advised to the contrary convincingly, I shall continue to entertain the views that I have in my faulting fashion placed upon the record.

Now, Mr. Hudgins, what I wanted to clarify was this: You are now under oath.

THE WITNESS: Yes, sir.

THE COURT: In the light of what I have just said, subject to a motion to strike, and that is always held out with regard to any testimony that has been received, that upon further consideration lawyers might feel the Judge might take a different view, they have got the right at any time to move and remove, despite the Court's determination or rulings, to reconsider the ruling.

Now, you are under oath.

THE WITNESS: Yes, sir.

THE COURT: And I want you to answer simple questions and if the questions I put to you aren't clear, you are to say, " I don't understand you, sir."

THE WITNESS: Yes, sir.

THE COURT: How long did you take under advisement

the possibility of the move from Queens to 94th Street?

THE WITNESS: Approximately three, three and a half years, sir.

THE COURT: What would you maintain under oath before this Court were the factors that you considered in order tomake that move and to close the contract with the city?

THE WITNESS: All right, sir.

THE COURT: Enumerate them. For instance, your father lived in the neighborhood, did he not, at the time?

THE WITNESS: That is correct.

THE COURT: Was that not a consideration?

THE WITNESS: Yes, it was a consideration.

THE COURT: That prompted your move?

THE WITNESS: Yes, sir.

THE COURT: Was that the all important one?

THE WITNESS: No, it was not. The most important one, your Honor --

THE COURT: Enumberate each one.

THE WITNESS: All right. Being born and raised in the ghetto of New York, as we define ghetto, I have seen the product of all low income housing and I did not want to rear my family in any type of area that was all of anything because it is my firm belief that those who are considered

the "have's" can gain many advantages by being associated with those that are called the "have-nots" and vice-versa and this is what I consider the ideal American way and I saw here the model for the nation. The only place --

THE COURT: In what?

THE WITNESS: In that this was to be a 30/70 percent economic mix community and I saw this as the most model community in the United States of America, hence, I was willing to make an investment and move my family there.

THE COURT: What other factors?

THE WITNESS: That was the motivating factor?

THE COURT: All right, that is the answer. That is your testimony, you say?

THE WITNESS: That is right, sir.

THE COURT: All right. Now, in a very general way, subject to further amplification from a practical point of view, there is much in what Mr. Land said, but we will receive in a general way your testimony to be supplemented, if necessary, by counsel with documents and so forth, but just as a bird's eye view, I will allow you at this time, in order not to hold up the proceeding, to testify along that line subject at a later time to strike, if counsel decide to take that position.

Now, let's get that over with, please.

BY MR. MORRIS:

Q Mr. Hudgins, I ask you again what was the amount of the investment that you made in this property, including the cash that you put in and the obligations to repay loans, which were made in connection with it?

A Approximately $265,000.

THE COURT: Tell us in a general way how that was committed?

THE WITNESS: I received a $200,000 mortgage from a savings bank.

THE COURT: Next.

THE WITNESS: The rest was personal funds.

THE COURT: Next question.

Q The rest was cash?

A Yes.

THE COURT: Don't repeat it. He said so. Next.

Q Now, when did you move into the property?

A The --

Q Approximately?

A Approximately the spring-summer of 1972.

Q 1972?

A Yes, sir.

Q Have you lived there continuously since then?

A Continuously, sir.

Q Did you then proceed with the renting of the other apartments in the two buildings?

A Yes, I did.

Q You succeeded in renting those out?

A Yes, I did.

Q Are they fully rented at the present time?

A At the present time, yes.

Q Now, since you have lived in the property have you observed -- what have you observed with respect to what is occurring in the West Side urban renewal area?

A Well, I saw quite a difference over this past summer than during the period that I was under construction in the Columbus Avenue area, below 93rd Street. I have seen what I term by my definition a great number of low income families milling about.

THE COURT: You see, that doesn't mean anything. They have got a right to mill about. What's wrong with that? I don't quite get it.

What is it you wish to call to the Court's attention now?

THE WITNESS: Well, sir, it is when you have a preponderance of low income families, low income families live a little different than middle income families.

THE COURT: In what respect?

THE WITNESS: Well, the fact that in many instances the families are larger.

In many instances they have no things to do within the home so you have a disproportionate number on the streets in the warm weather.

THE COURT: That is telling me something. Next.

Q Are there also other respects in which there are disproportionate activities on the part of these low income families?

THE COURT: That is just almost suggestive. It is almost pricking the witness into a certain channel of thought.

What else do you wish to call to the Court's attention in that regard, in that general regard of conditions in the neighborhood that you have personally observed?

THE WITNESS: Naturally you are going to have an increase in crimes.

THE COURT: What do you base that on?

THE WITNESS: Well, I had a personal experience, your Honor.

THE COURT: One episode that you are talking about?

THE WITNESS: On October 17th --

THE COURT: No, I don't want to know about it

necessarily, but what else would you say?

THE WITNESS: I had a personal experience with crime.

THE COURT: Don't you see, Mr. Hudgins, all over the country in wealthy areas, in middle class areas, in poor areas, there isn't anybody whose eyes have been opened who isn't aware that during the last year or two in particular there has been a breakdown, call it what you will, let's leave that to the sociologists, but there has been a breakdown of deportment, but it isn't peculiar to one area alone and all I want to do is try to understand what you are complaining about when you say there are conditions that afflict you or bother you or that you regard as not consistent with what you understood was the representation made to you and which was an inducing factor for the committment that you made with respect to your property?

THE WITNESS: I think that we all recognize that there is a greater proportionate use of drugs in low income areas. If we accept that fact, then I say to you that if you have more than the 30/70 economic mix, you will then proportionately have a greater drug use.

THE COURT: What proof is there of that? Now you are theorizing.

THE WITNESS: Well, I apprehended and held at

gunpoint a man who was a drug addict who was breaking into my home until my wife called the police and he was arrested on October 17, 1972.

THE COURT: What else?

THE WITNESS: At 29 West 94th Street.

I have had several of my tenants that have been -- I don't know if it is mugging, this is hearsay -- they told me they were robbed on the corner of 93rd and Columbus Avenue.

I recognize that this could happen on Park Avenue, too, but it so happened that it happened here.

My daughter has had problems when she has gone to the store for her mother. This could also happen.

THE COURT: What do you mean by "problem"? Accosted?

THE WITNESS: Accosted and the money was taken from her, but this again could happen anyplace, I recognize that, but what happened with me specifically where the fellow was breaking into my home, I know of to be a fact because he was arrested.

THE COURT: I understand.

THE WITNESS: And he was a drug addict.

THE COURT: Yes, sir.

Q Would you tell me how many children you have,

Mr. Hudgins?

MR. DOUW: I wish to make a motion to strike all this testimony that is conclusory in nature. I don't believe he has shown competence to testify as to certain characteristics of classes of people, as related to drug addiction and things of that kind.

THE COURT: I think you had better wait and you renew it after he has completed his testimony. I don't know yet what he is likely to say on that score before he is through. Renew your motion later on.

MR. DOUW: Thank you, your Honor.

Q Do you have any children?

A I have four.

Q You have four children?

A That is correct.

THE COURT: Their ages?

THE WITNESS: 22, 21, 19 and 13, the three older being boys.

Q Are those their ages at the present time?

A Those are their ages at the present time.

Q Do any of your children attend school in the vincinity?

A One.

Q Will you tell us which one that is?

A My daughter goes to the Franklin School at 89th and Central Park West, sir.

Q Does she walk to school?

A Yes, she does.

Q Have there been any problems in connection with her attending school in the area?

A There have.

Q Would you tell us about them?

THE COURT: Will you suffer an interruption. Announce a recess, Mr. Clerk.

THE CLERK: Ten minute recess.

(Recess.)

(Continued on page 1223.)

THE COURT: All right, let's go on.

BY MR. MORRIS:

Q Mr. Hudgins, were there other observations you have made with respect to the area since the time you moved in?

A Yes, sir.

Q Would you tell us what they were?

A Yes. I have noticed an increase in the number of persons seemingly under the influence of narcotics and alcohol on the streets.

I have seen hanging from the balconies and terraces of some of the buildings, objects of clothing and that type of thing. I have seen graffiti that seems to have increased in the area disproportionate to other areas of the city.

Q It was on the basis of your observation of the area since you lived there that you testified that the area is deteriorating, is that correct?

A That's correct.

Q Have you taken any action with respect to your daughter, the 13-year old daughter going to Columbus Avenue?

A Yes.

Q Would you tell us what you did with respect

Q An A & P food market?

to that?

A I have given her instructions that she is to come to and from school via Central Park West.

THE COURT: As against?

THE WITNESS: As against Columbus, sir, because the school is located between the two avenues on 89th Street.

Q Now, would you tell the Court from your observation of the situation that exists as of the present time in the West Side Urban Renewal area how that relates to the reasons that you move into this area? What is happening with respect to that?

A Well, I see a deterioration of the reasons why I initially came and made the investment and if we get solid buildings of low income, which in my opinion are a stigma to put people in buildings and call them tenants of low income housing rather than integrated economically throughout the entire area, we will not have what was told to me we would have.

MR. MORRIS: That is all, Mr. Hudgins.

THE COURT: Cross.

(Pause)

MR. LAND: Mr. Morris, may I have from you, please, Plaintiff's Exhibit 35 and 35-A?

MR. MORRIS: And 36 also.

CROSS EXAMINATION

BY MR. LAND:

Q Mr. Hudgins, Plaintiff's Exhibit 35, which is a letter of intent, I see in the last page a copy of a signature. I don't recognize your handwriting, but I presume one of those is yours, is that correct?

A That's correct, under the very truly yours.

Q So you did sign this document?

A Ye , I did.

Q Prior to the time you signed this document, did you read it?

A Yes, I did.

Q Did you discuss the contents of the document with your attorney?

A Yes, I did.

Q Was this document signed by you after the time that the City officials made the representation to you in respect to the 30/70 percent economic integration?

A Yes, it was.

Q Were there are other representations other

me? What do you mean by deteriorating?

than the 30/70 percent economic mix, oral representations, made to you by City employees or officials which induced you to move into the upper West Side?

A No.

Q Did any public official, City employee, state to you that when they showed you the map of the plan in existence at that time that each and every site which you see on that plan will be developed solely according to the way it was currently designated and that there would be no amendments or changes in any site designation?

A I was told that the low income houses that were there were there, which I accepted, but I was told that the future construction would be under the 70/30 mix. And I was also told that no changes would be made to that plan.

Q Okay. But was it your understanding that within the plan there may be some -- in other words, if a particular housing location was scheduled for, let's say, the 70 percent type of people, that if that was changed down to the 30 percent type of people that perhaps in another area that would be a reverse, in other words, the 30 percent would become a 70 percent, anything like that, in other words, to keep the total approximately the same.

3 income. I asked you in your father's building on the

MR. MORRIS: I object to the question. I don't understand the question and I don't think the witness can answer it.

THE COURT: I happen to understand it, but it is not all important what I understand.

Do you understand the question, Mr. Hudgins?

THE WITNESS: I am trying to.

MR. LAND: I will strike the question, your Honor.

THE COURT: All right.

Q I call your attention to paragraph 27 of your letter of intent, Mr. Hudgins, and I read it to you.

"No statements or acts by or in behalf of either the City of New Yor or the Housing and Redevelopment Board shall constitute an understanding with respect to or contract for the disposition, sale or purchase of the above-mentioned premises unless and until the annexed proposed contract of sale is approved by resolution of the Board of Estimate and is executed and deliver in behalf of the City pursuant thereto as seller and undersigned purchaser."

Did you read that?

A Yes, I did.

A Right.



Q Okay.

Did you read it prior to the time you signed the letter of intent?

A Yes.

Q Mr. Hudgins, did you ask any City official to reduce to writing the statement that the economics would be 30 percent/70 percent?

A No, I did not, sir.

Q But you considered that almost the motivating force of your moving into the area?

A Yes.

Q Referring to Plaintiff's Exhibit 35-A, which is your contract of sale, I presume your signature is on here, correct?

A Yes, it is.

Q And you read the document before you signed it?

A Yes.

Q And that you discussed the contents of your attorney before you signed it?

A That's correct.

Q I bring your attention to Section 110 of this contract and I will read it to you: "It is understood and agreed that all understandings and agreements

A July 15, '71 is when I signed but it was heretofore had between the parties hereto are merged in this contract which alone and fully completely expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this contract made by the other. The purchase has inspected the buildings standing on said premises and is thoroughly acquainted with its condition."

Did you read that paragraph 110 of your contract before you signed it?

A I read that and others that I did not understand, nor could my attorney get clarification on it. He advised me that if we wanted to buy the property and if we had reason to believe and have faith in what the City had said, that I had to sign it and that was it.

I recognize politically I am extremely naive, but I had reason to believe these things would be lived up to.

Q Mr. Hudgins, when you used the phrase 30 percent/70 percent economic integration, do you apply that to everybody who lives within the West Side area?

A Yes.

Q It is not simply as to those people who reside

Site 30 in the area for 160 units of low income housing?



in the new developments in the area but as to both the people who live there in homes and apartments that were not effected by the Urban Renewal but as to every plan?

A I think I know what you are driving at. I am going to try to answer as best I can, being under oath.

It is my understanding, my belief, that it should certainly apply to everything new that is to be done, and I had been told that if the balance of the community is developed on the 70/30 ratio that we will have the kind of neighborhood that was promised.

Q And also the 30/70 percent ratio should apply to the other dwellings which were not going to be changed by reason of the Urban Renewal Plan?

A Within the Urban Renewal area?

Q Yes.

A Sure.

Q So that the entire area, once it is done, take everyone as a homogeneous group, then the 70 percent and 30 percent economic ratio will apply.

A That's right. That is why I came in.

Q If, for example, right now the ratio of the entire population up there is only 25 percent lower income and if the City of New York plans to build a low

THE WITNESS: They were employees of the

income unit of 160 units which would raise the ratio of low income people from 25 percent let's say to 28 percent, you would have no objection to that, would you?

A Only if all of one building at this time was low income, because I think that that is an unfair stigma to put on any child. I have seen the products of low income housing, I have within my own family, one of my aunts, has lived and reared her children in a low income project in the Bronx, and I have seen the results of it and I am definitely against it.

Q I see. But as to the point of increasing up to 30 percent low income persons in the area, you have no objection to that?

A Of course not. That is what I want.

Q Fine. Would this 70/30 percent mix also apply to the neighborhoods or blocks immediately contiguous to what is known as the Urban Renewal area? In other words, let me put it this way: The Urban Renewal area is a rectangular shaped section of the City, two blocks wide by approximately ten blocks long. It does not necessarily represent one independent community. The community itself may somewhat flow to the north and south and over towards the east, toward the Riverside Park area, so that the neighborhood itself may be somewhat

larger than just the ten blocks.

Do you understand what I am saying?

A Yes.

Q Do you agree with the statement that the West Side neighborhood is larger than just the ten blocks?

A That's all we can deal with now because that's what I bought into. I would like to see this kind of housing, 70/30, all over the entire city. I don't think Harlem should be loaded with low income projects. I don't think Bed-Stuy or the South Bronx. I think there should be a 70/30 mix throughout the city. I think we will be a better city that way.

Q That would apply, obviously, to the West Side area?

A It comprises New York City.

Q Do you know what the ratio, the economics, is as to the West Side area right now?

A I do not know. I have seen various statistics. Some say that it is over 30 percent now, some say it is under. So I cannot testify to that.

Q Okay.

Mr. Hudgins, you have testified about your philosophy of what you think the American way should be

Q Yes, the 20 square blocks?



and what it is all about, and you testified, as I recall, that you moved to the West Side area because in your estimation a 70/30 percent mix was, for your way of life, ideal and that that is what you would like to see and you moved in there and I presume you are one of the 70 percent, is that correct?

A That's right. I would not consider myself low income.

Q During the course of your testimony you told us that prior to the time you moved up there you walked around a lot, you saw a lot of construction going on. I presume that some of the construction involved the demolition of low income housing projects, is that correct?

A That's correct.

Q You know that as a fact?

A Yes.

MR. MORRIS: Your Honor, I will object. There has been no demolition of any low income housing projects. The term "project" applies in the housing field to projects developed by the Housing Authority and those are usually new buildings. There has been no demolition of those. If counsel means by his question old tenement buildings which were demolished then I have no objection.

which runs from 90th to 91st between Columbus and Amster-



MR. LAND: I do.

THE COURT: With that understanding, the testimony stands.

THE WITNESS: Yes, sir.

Q Is it your knowledge that when low income tenements are destroyed that the occupants are removed to some other locations, is that correct?

A Yes.

Q Do you know whether or not the people who were removed from low income tenements were given assurances by the City that they could return to the West Side area once new construction was completed?

A I am told that they were given that assurance.

Q Okay.

Do you have any opinion -- strike that.

Do you have any knowledge whether or not all the people who were removed from the area to make way for the new construction have in fact returned?

A No, I do not have knowledge. It is my hope that they will.

THE COURT: That is a complete answer. No one can touch that unless they have proof to the contrary.

Next question.

this should be a compromise from something that seemed



Q Could you give us the rental ranges, monthly rents, of lowest and most expensive apartment in your two buildings?

A Surely. The lowest is $200 per month, the highest is $390 a month.

Q Are any of the tenants in your ten apartments low income persons?

A No, not by the standards that we use. The building is --

THE COURT: No, that is an answer. The rest gets to be argumentive.

Next question.

Q Mr. Hudgins, I show you Plaintiff's Exhibit 31, a copy of Plaintiff's Exhibit 31, which is a map of the ten square blocks in the renewal area. You testified that you lived on West 94th Street, which I would put someplace right here where my pen is pointing.

Could you point out with the pen where, approximately, in that block you live, on what side of the street?

A On the north side approximately here, sir (indicating).

Q Approximately two-thirds of the way towards Central Park West?

THE WITNESS: An economic mix in the community



A That's correct.

Q We see on this map many little rectangular squares, maybe an eighth of an inch high and a quarter inch long.

What do they represent?

A They represent brownstones.

Q Like your own?

A That's correct.

Q I see here facing on Central Park West blank spaces, all white. Do you know what they represent?

A Apartment buildings.

Q Untouched by the redevelopment of the area?

A That's correct.

Q Do you know whether these are low income or middle income?

A One is a cooperative to my knowledge and one is a rental.

Q So that in the block ending with your street we have a co-op and a rental?

A That's right.

Q As to these two they are not low income, to your knowledge?

A No.

Q Now, I take it down the street and on the

proposed for both Site 30 and Site 4, and that would



south side I see a very small little box called public housing.

Do you know what that is?

A It is exactly as you stated, public housing.

Q Do you know how many people reside there, how many units?

A Sixty or seventy families, I believe. I am not sure.

Q And I take it at the end of the street on Columbus Avenue, and I see an area marked 17, do you know what that is?

A That's a cooperative.

Q Middle income?

A Yes. Well, I am pretty sure they have --

Q All right, it's a cooperative.

A It is public housing leasing.

Q Across the street there is a number 13. Do you know what that is?

A The same thing.

Q Cooperative?

A I believe. I am not sure.

Q Are there any retail establishments on West 94th Street or is it all residential?

A There is a food market that comes into the

ing put up in the area is broken down 70 percent middle street. However, I am sure that its address is Columbus Avenue.

Q An A & P food market?

A Food Star.

Q It is like an A & P?

A Yes. Supermarket. That's on the northeast corner.

Q Other than that you don't know of any retail establishments on West 94th Street?

A That come into the block, no. There are others on Columbus Avenue.

Q But West 94th Street is entirely residential?

A That's correct.

Q Are all your apartments currently rented?

A Yes, they are.

Q Do you have a waiting list?

A I have had a number of vacancies but I haven't had a waiting list.

Q Do you have any trouble renting them when they become vacant?

A Yes, I have.

Q Are they filled now?

A They are now as of the 1st of this month.

MR. LAND: May I have a moment, if your

THE WITNESS: That is what I would

Honor please?

THE COURT: Surely.

(Pause)

Q Mr. Hudgins, a few statistics I would like to ask you if you have any knowledge of.

Do you know the total number of people currently residing in the West Side Urban Renewal area?

A No, I do not.

Q Do you know of any of the criminal statistics of that area?

A No, I do not, only my personal experiences, that's all.

Q Mr. Hudgins, I would assume -- strike that.

MR. LAND: I have no further questions of the witness, your Honor.

THE COURT: All right, next. Mr. Gold.

CROSS EXAMINATION

XXXX BY MR. GOLD:

Q Mr. Hudgins, when you lived out in Queens, was that an apartment or did ycu own a home?

A No, private home, one family home.

Q You described the area in St. Albans as changing or deteriorating?

A Yes.

Q Would you describe that a little further to me? What do you mean by deteriorating?

A When an area begins to house more people than it was originally designed for, that area deteriorates because the public services can't accommodate a larger number of people and houses that were originally built for one family were becoming two family houses and that's when I considered that it was deteriorating because apartments were being rented to low income families in a disproportionate relationship.

Q Your father lived on the same block, is that right?

A Yes.

Q Does he own a building, a brownstone?

A Yes, he does.

Q Doeshe have in his brownstone any low income families?

A Maybe we ought to define low income. When you say low income, a person comes and you don't ask a person, are you low income. You ask, can you pay the rent that I am asking.

Q In your estimation, Mr. Hudgins, based on your testimony so far and your understanding yourself of what low income is, you said, for example in your own

for low income would apply to any of the tenants in building, in your estimation, the tenants are now low income. I asked you in your father's building on the same block, in your estimation are the tenants low income, any of the tenants?

A I cannot honestly answer that question. I do not know.

Q Have you ever since you have lived in the West Side area, have you ever made any kind of a survey as to the number of low income tenants that live in the area?

A Only visually, not a professional survey, no.

Q Visually?

A That's right.

Q You mean in walking through the streets?

A That's correct.

Q And you have some criteria by which when you visually make this judgment you can tell somebody is a low income person, is that correct?

A Having been born and reared in the neighborhood that would certainly be called low income, I think I can visually determine, yes.

Q You mentioned something very interesting with respect to the public housing. You said, I think,

that you were concerned with the people.

A Right.

Q -- who are being --

A Stigmatized.

Q Let me ask the question.

Who I believe were being stigmatized by living all together in one project, is that correct?

A That's correct.

Q And that bothers you?

A It does.

Q You would rather have them spread out, is that correct?

A Yes.

Q So if we took the same numbers, let us say, from Site 30, 160 units and we spread them throughout the area in different buildings you would not object to those people living in the area?

A Of course not.

Q Your major objection as to public housing is the fact everybody is concentrated in one place?

A Stigmatized.

Q Now some dated agaon on when you -- let's see. You signed your contract I believe you said sometime in June of '71 and it is dated as of February 11,

'71, is that right?

A July 15, '71 is when I signed but it was dated in February, sir.

Q At that time, sir, were you aware of the fact that the Board of Estimate of the City of New York had designated Site 4 in the area which is up on 97th Street and Columbus Avenue for 270 units of low income housing?

A No, I wasn't. I wish I had been aware of it.

Q You were not aware of it?

A No.

Q I would presume from that answer that you did not attend the hearing at the Board of Estimate in connection with that change?

A No, I did not.

Q Now, you took title on August 5 of 1971, is that correct?

A August 19 of 1971. That's dated --

Q I understand. At that time, sir, were you aware of the fact that the Board of Estimate had designated Site 4 for 270 units of low income housing?

A No, I was not.

Q Were you aware of the fact at that time, in

August of '71, that there was a proposal to designate Site 30 in the area for 160 units of low income housing?

A No, I was not.

Q Did you at any time after you took title become aware of the fact that the City was so designating Site 30?

A During the later part of my construction period I was made aware of this, yes.

Q Could you give me a point in time?

A It would probably be early '72.

Q I see. And you of course did not -- I shouldn't say of course. I withdraw that.

You did not attend the hearings of the Board of Estimate in connection with Site 30?

A No.

Q You mentioned that in early 1970 you through your attorney or together started or commenced negotiations with the City in connection with the purchase of the brownstones, is that correct?

A That's correct.

Q And that you visited with a William Decker Clark sometime early in 1970, is that correct?

A That's correct. And also with Joe Sherry and Bill Hunter and Joe Luria.

had applied.



THE COURT: Who were they, Mr. Hudgins?

THE WITNESS: They were employees of the City of New York who worked under Mr. Clark.

Q Mr. Hudgins, let's take them one at a time. When you met with Mr. Clark, did you meet with him in the main office of the Housing and Development Administration?

A When I met with him it might have been in Two Laffayette, if they had not moved into 100 Gold yet. There was a period in there where they were at both places.

Q I will tell you that I will consider either Two Laffayette or 100 Gold the main office, so either one.

A That's correct.

Q When you met with Mr. Sherry, Mr. Luria and the other gentleman that you mentioned, was that at the site office up in the area?

A I met with Mr. Luria in the site office, I met with Mr. Hunter in the site office, I met with Mr. Sherry at the main office.

Q How many times did you see Mr. Clark in connection with the proposal to rehabilitate the brownstones?

Q Your attorney read it, correct?



A A minimum of half a dozen.

Q Did you know Mr. Clark, by the way, prior to your getting involved in this proposal to buy the brownstones?

A Passing acquaintance only.

Q And I think you said that Mr. Clark was in charge of the rehabilitation portion for the West Side Urban Renewal area.

A That's correct

Q Are you quite sure of that?

A No, not quite sure, no. As I said earlier, I must admit my political naivete.

Q Were you in attendance with your attorney when you met with Mr. Clark?

A No.

Q Alone?

A That's correct.

Q And just to get it really clear, Mr. Clark said to you in substance, that there would be a 70/30 economic mix in the area?

A Yes, that's correct.

Q You understood that to mean the entire West Side area?

A Urban Renewal area.

property that you own?



Q Yes, the 20 square blocks?

A That's correct.

Q Did you also understand that to mean in that entire area if you took all the people in the area, 70 percent would be middle income people and 30 percent would be low income regardless of where they were?

A No, our conversation wasn't quite that way, because I do not believe that I would have accepted it if they had all be concentrated at 87th Street and 70 at the other end. No, I was not of that belief at all as a result of our conversation.

Q Did Mr. Clark go into any detail about this?

A He showed me a map, we discussed it and he pointed out to me buildings that were cooperatives, that people of low income , some even on welfare would receive certain funds from the state to buy into cooperatives and they would be able to live there along with middle and moderate income people, and this is what appealed to me.

Q Did he point out to you, for example, that there was a public housing project known as Stephen Wise Towers in the area at the time you spoke?

A The name doesn't mean anything to me.

Q Let's locate it, then, sir. This is a project

and entered into all these agreements, that was 1970, which runs from 90th to 91st between Columbus and Amsterdam Avenue.

A That was built at the time.

Q That's right.

A That's right.

Q Did Mr. Clark point it out to you?

A He pointed out to me several fully low income projects that existed in the area and told me that they were there and I knew that and I accepted that. I didn't agree but I accepted.

Q Did you ever read the Urban Renewal plan of the city with respect to this area?

A Yes, I did.

Q Did you read the final version that was then in existence in 1970, that is, 1966, fourth amendment?

A Yes.

Q Did you discuss that with your attorney?

A Yes.

Q The terms?

A Yes.

Q Did it ever come to mind, did it ever come to your mind, that there might be changes in that plan?

A No, it didn't, because this was being held out as a model for the nation and I could not see why

that.

this should be a compromise from something that seemed ideal.

Q At the time that you read this plan -- when would you place the time, approximately?

A Prior to my entering into the letter of intent, prior to April of '70.

Q Sometime early, perhaps, in April '70?

A Right.

Q Were you aware of the fact the plan you were reading was different from the plan that had been originally adopted by the Board of Estimate in 1962?

A No.

MR. LAND: His answer was a nod of the head.

THE WITNESS: I said no. I am sorry. I thought I had spoken out.

Q So that when you read the plan and when you spoke to the City officials and you entered into the arrangement to purchase the brownstones from the City you thought there was one plan, is that correct?

A That's correct, the plan that had been told to my father in '65 and the plan that was told to me in late '69 or early '70, that's correct.

THE COURT: And by that you mean the plan which defined -- go ahead.

THE WITNESS: An economic mix in the community of 70/30.

THE COURT: That would be the formula with respect to the entire area embraced within that particular Urban Renewal project?

THE WITNESS That's correct, your Honor.

THE COURT: Next question.

Q When you read the plan, Mr. Hudgins, did you see any mention in the plan of an economic mix in the area of 70 percent middle and 30 percent low income people?

A As I recall, I did.

Q Do you know, Mr. Hudgins, if the economic mix today in the area is 70 percent middle income and 30 percent low income?

A I stated to the other counsel that I have seen two sets of statistics on that. One says it is and the other says that it is not. So I have no way of knowing exactly because I don't know what set of figures is accurate. I only know that if you continue with totally low income projects, you are not going to have the kind of community that is as was originally desired.

Q Mr. Hudgins, supposing we continue, as you say, with the two low income projects that have been

proposed for both Site 30 and Site 4, and that would total at the moment 430units of low income housing, and those are built and after they are built it is determined that the area still remains totally 70 percent middle income and 30 percent low income, would that bother you?

A May I have that question again?

THE COURT: Surely. Would you repeat it, Mr. Court Reporter?

(Question read)

A What confused me was the last part, bother me. It would be my desire to see it spread throughout the entire area. I have seen a great number of vacant lots, buildings that are housing squatters now, buildings that are serving as harbors for derelicts now that I would like to see torn down and built on a 70/30 basis. That would make me happy.

of low income persons when you had a vacancy?

Q What you would really like to see, then, isn't it correct, Mr. Hudgins, is that every new building put up in the area is broken down 70 percent middle income and 30 percent low income?

A You couldn't have stated my belief any better.

Q Did the City or the City officials that you speak of, did they represent that every building that was to be built in the area was going to be 70 percent middle and 30 percent low income?

A No. I recognize that it could not be done that way because of buildings that had been completed already, but I was told that tis is what the end result would be.

THE COURT: By that I don't quite understand. What were you told would be the end result?

THE WITNESS: That it would be a 70/30 economic mix.

THE COURT: You mean by that you were told that while they were not going to do anything about the buildings already inhabited at the time?

THE WITNESS: Right.

THE COURT Certainly with regard to new structures and certainly with regard to any alteration of structures, which would then open up apartments to

through the area you saw congregations of low income humans, for occupancy, that all such units, each one, would have a 70/30 economic mix.

THE WITNESS: That is what I was told, your Honor.

THE COURT: All right. Then to press it further, you were never told that outside of the buildings already occupied, the plans with regard to the remaining area involved in the Urban Renewal plan would be occupied by tenants so that the overall would be 70/30 and that some buildings would be completely low income, other buildings would be a mixture to a certain percentage of low and middle, but that the overall would be 70/30?

THE WITNESS: That's correct.

THE COURT: You were never told that?

THE WITNESS: No.

THE COURT: You were told that each building would have a 70/30 ratio?

THE WITNESS: Of the new ones, yes.

THE COURT: Of the new buildings?

THE WITNESS: That's correct, sir.

THE COURT: When you say new buildings, does that include the old structures that were going to be renovated?

THE WITNESS: That's correct, sure.

THE COURT: All right.

Q Your own two brownstones do not have a 70/30 breakdown, do they, sir?

A Well, my brownstones are subject to rent control and the rents that have been established by the City of New York are what I charge. Anyone who comes and makes application when I have a vacancy can come in.

I am sure that you recognize that there are cooperatives and there are other buildings that have low income families in them that are considered luxury buildings or very fine buildings. There is one certainly on the corner, the northwest corner of 94th and Columbus, so if a person came, who was on welfare, to live in my house and they wanted that apartment that rents for $200 a month, they would have that apartment. I hope that answers your question of how I feel.

Q Partially, sir.

A Okay.

Q The answer I was really looking for was: Is your building now 70 percent middle income and 30 percent low income?

A I answered the question for the other attorney

is infused with a great deal more meaning than just that that I do not believe that the standards that we use for low income would apply to any of the tenants in my building.

Q That still does not answer my question.

THE COURT: No, it really doesn't, Mr. Hudgins, because, you see, what you believe you are entitled to your beliefs and you have a right to stand up for them. The question is with regard to evidence before me, that poses a different --

THE WITNESS: I see, sir.

THE COURT: A different situation. We want to know and he has a right to press it, within what you understand was meant by the 70/30 economic mix, now that had a certain connotation?

THE WITNESS: Right.

THE COURT: So within that connotation, are your properties 70/30?

THE WITNESS: No, sir.

THE COURT: All right, next question.

Q Is your father's building on the same block 70/30?

A I don't know the answer. The other counsel asked that question and I don't know the answer to that question.

A Well, it was certainly well publicized.

3 O The units that are within the 30 per cent allo-

Q You have a couple in the other studio?



Q Are any of the other brownstones on the north side or south side of 94th Street where you live broken down into a 70/30 category income-wise?

A I do not know what the category, the breakdown is, but I do know that there are low income families on the north side of 94th Street between Columbus and Amsterdam. I mean, I am sorry, between Columbus and Central Park West.

Q In the brownstones?

A In the brownstones on the north side.

Q Do you know how many families, sir?

A No, I don't know.

Q But it is your understanding and in answer to his Honor's question, it is your understanding, then, that the officials of the City meant every building including those that were rehabilitated and renovated such as yours would be included in the 70/30 breakdown, correct?

A That's right, yes.

Q And yet your own two buildings are not included?

A Well, that is not by my choice. I had apartments available for rent at the legal rents as set by the City of New York and would have rented to anyone who

are low income units as you understood that term when had applied.

THE COURT: You understand, Mr. Hudgins, before you get off the stand, I do not want to know -- I do not want to know just what has resulted, that is important, but I want to know what was said to you. You understand, those are different things.

THE WITNESS: Yes, sir.

THE COURT: What was said and not fulfilled; what was said and fulfilled; what was said that is counter to what you maintain eventuated, that is for me to decide, but I want to know what the fact is and I repeat: Were you or were you not told that with regard to the new occupancy, and by new occupancy I mean occupancy by people in structures that were not then fully occupied and which would not be disturbed, all the new vacancies, tenant vacancies, wherein the old brownstone, a new structure, are you saying that you were told that the 70/30 economic mix would apply to each one of those structures?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Q When you entered into your contract, sir, for purchase, signed it in July of 1971, you read it, is that correct?

versations with Mr. Clark, Mr. Hunter, Mr. Luria and



Q Your attorney read it, correct?

A That's correct.

Q Did you see any indication in that contract---anywhere in that contract -- that every newly developed building in the West Side Urban Renewal area would be broken down 70/30?

A I don't think it says so specifically in there.

Q Did you see that in there?

A I do not recall.

Q In the deed, which is dated August 5, 1971, for the actual delivery of title to this building---

THE COURT: And numbered as an exhibit?

Q I am sorry, Plaintiff's Exhibit 36, did you see any statement in there that every newly renovated built and occupied building in the West Side area would be a 70/30 breakdown?

A No.

Q Have you at any time within the last six months placed your brownstones on the market for sale?

A Oh, no.

Q Do you have a swimming pool?

A Beg pardon?

Q Do you have a swimming pool as a part of the

property that you own?

A I do.

Q Is that a built-in swimming pool?

A It is.

MR. GOLD: Excuse me just one moment.

THE COURT: Surely.

(Pause)

Q Mr. Hudgins, with respect to this lawsuit and particularly with respect to Site 30 and Site 4, which are the problems, the issues, would you be satisfied with a solution that took the 430 units proposed for those two sites and distributed those units throughout all the new development, including the renovated brownstones and your own, so that every development was brought up to 30 percent, would you be satisfied with that solution?

A Well, I would be satisfied if it was overall in those that are 100 percent low income were made 70/30. You know, that is a one-sided question you are asking me.

Q What you are saying is you really object to all public housing projects.

A I thought I made that clear.

Q Yes, but of course when you came to the area

Q Did you ask the question?

and entered into all these agreements, that was 1970, things had already happened?

A There was nothing I could do about it. I don't have to agree with everything I go along with.

Q Now we have two new proposals, correct?

A Right.

Q And they involve 430 units of this so-called concentrated public housing?

A That's correct.

Q Which you don't like?

A Absolutely.

Q Let's take the 430 units, Mr. Hudgins, and spread them out into the other buildings, into some of the buildings that may not have a 30 percent low income ratio?

A Right.

Q Including your brownstones?

A That's right.

Q And every other one that was rehabilitated privately?

A Right.

Q Would that be a solution for you to the problem that this lawsuit is directed at?

A Yes, but that is not practical and I recognize

Q You know the name. Are you familiar with that.

Q I am not asking you that, sir.

A All right. To answer your question, would that make me happy? The answer to the question is yes.

Q So your real problem, then, Mr. Hudgins, is the fact, the low income project concept?

A And what it does to people.

Q The people who live --

A Who live in the low income project, right.

Q Not necessarily what it is doing to you or your family or your two brownstones, but what it does to those people who live within the project?

A In the world we live, what is done to them is also done to me. I am a part of the world I live in.

Q That is probably true, Mr. Hudgins.

A Let us hope so anyway.

Q Wihtout my conceding that point, I might also feel the same way.

A Okay.

Q However, you are concerned with the people in thos projects, correct?

A You know, Mr. Gold --

Q Yes or no.

A Yes, I am really concerned about them, right.

Q Would you like to see, for example, a project such a Stephen Wise Towers, which has 400 units of public housing in a number of buildings, but concentrated in one area, would you be happy to see those buildings or those units broken up and having the so-called 70/30 economic mix?

A Yes, sirree.

THE COURT: Gentlemen, you want to confer one with the other I notice, let's break it up then and return promptly to resume his testimony at 2:15.

MR. GOLD: Thank you.

(Luncheon recess)

AFTERNOON SESSION

2:15 P. M.

A L V I N C. H U D G I N S, resumed.

THE COURT: All right, Mr. Gold, please complete your cross examination.

CROSS EXAMINATION (CONTINUED)

BY MR. GOLD:

Q Mr. Hudgins, the $200 a month rental unit in one of your brownstones, is that a one-bedroom unit?

A No, that's a studio, sir.

Q Studio. In your opinion, sir, would that be a suitable unit for a low income family?

A A family of two, yes.

Q A family of two?

A Yes.

Q Husband and wife?

A That's correct.

Q It would not be a suitable unit for a family where there were children?

A No.

Q From your testimony I get the impression that you are sincere in this 70/30 belief of breakdown in the area.

In that connection, sir, have you ever requested

about it.

of any City authority the placement in your two buildings of low income persons when you had a vacancy?

A No, I have not.

Q Is it possible even though your building is rent controlled, as you said, to charge less than the controlled rent?

A It would not be economically feasible.

Q But it's possible?

A Not and meet my obligations.

Q By the way, just to clarify this, the swimming pool you mentioned, is that part of the property?

A Yes, it is.

Q Where is that -- in the back?

A In the rear, yes.

Q A built-in concrete type?

A That is correct.

Q Is that used exclusively by yourself and your family?

A That is correct.

Q In other words, the other tenants in the building do not have the use of that pool?

A No.

Q So if low income people to the extent of, let's say, 30 per cent were to be in your building they would not have the use of that facility, is that correct?

MR. DOUW: On the grounds that he is not

A That is correct.

Q You also mentioned that on occasion in walking through the area you saw congregations of low income people on street corners milling about.

A That is correct.

Q That same milling about is possible even if the whole area was brown down to 70 per cent middle income and 30 per cent low income, is that right?

A Proportionately to where the people resided.

Q In other words, what you are saying is the people you saw milling around reside right where they were milling around?

A I didn't ask them where they lived, but that is an assumption I think one can safely make.

Q That is an assumption you made?

A That I can safely make.

Q But that was not based on any personal knowledge of where these people resided?

A No, it was not.

Q And in connection with the clothes you saw hanging on balconies, that could have occurred also with a 70/30 breakdown in the area?

A Of course it could.

MR. GOLD: I have nothing further, your Honor.

THE COURT: Mr. Douw.

CROSS EXAMINATION

BY MR. DOUW:

Q Mr. Hudgins, I believe you testified that when you were first moving to the West Side Urban Renewal Area that you visited the sites and the particular brownstone or brownstones you were interested in and that you talked with several people about what the plans of the area were and among those people you talked to was a Mr. Clark, is that correct?

A That is correct.

Q Was it Mr. Clark who said to you or at least one of the people who said to you that the economic mix was going to be 70/30?

A That is correct.

Q If you knew nothing about the area and nothing about this particular subject matter and someone came up to you and said or had any discussion with you without any preparation, "The mix is going to be 70/30," you wouldn't know what they meant, would you?

A I would. I had the advantage of having a father who lived in the area.

Q That is not my question. Let me state it another way.

the activities of Continue?

The phrase "The mixture is going to be 70/30" is infused with a great deal more meaning than just that sentence, is it not?

A Not to me it isn't.

Q Let me ask it another way.

Who broached the subject with the 70/30 mix in your conversation with Mr. Clark?

A I did.

Q And what did you ask when you broached the subject?

A I asked him if that which I had heard to be so from my father was an actual fact and he could be held to. That is how I broached the question.

Q Did you say to Mr. Clark specifically, "Is there going to be a 70/30 mix in the West Side Urban Renewal Area?"

A Yes, I did.

Q Did Mr. Clark know what you were talking about?

A Oh, certainly.

Q So I gather from your testimony that it was from your father that you learned about the proposal for the 70/30 mix.

A Yes, that is correct.

Q Was that the first time you learned of the

THE COURT: Anything else, gentlemen?



proposal?

A Well, it was certainly well publicized.

Q That is not my question. Was it from your father you first learned of the 70/30 mix, if you remember?

A I do not remember exactly whether it was from he alone, but I certainly discussed it with him.

Q What did you understand to be a low income -- I will withdraw that.

When one speaks of 70/30, in your understanding of it in your conversation with your father and whatnot, did you understand that to be units or people?

A Units.

Q If it was 30 per cent low income units, what was your understanding of what that meant?

A That meant that people who were on welfare or people who were earning a low salary by the Department of Labor standards would be living in the area to the extent of this percentage.

Q Now you are talking about people of low income, are you not?

A Right.

Q But you said that 30 per cent you understood to be units, is that correct?

A Family structures where their income came into

read the Urban Renewal plan for the West Side Urban



play.

Q The units that are within the 30 per cent allocation, would the rents charged be different than a 70 per cent allocation?

A Yes.

Q And was it a rent definition that you had in mind when speaking of the 30 per cent allocation?

A I think it would be proper to say yes.

Q I believe you testified that of the nine or ten apartments in your two brownstones, that the lowest rent was $200 and the highest rent was $390, is that correct?

A That's correct.

Q Let's take the $200 one. What unit do you charge $200 for? How do you describe that?

A That is a studio apartment that the rental is $200 per month.

Q And the $390?

A That's a duplex with one and a half baths and two terraces.

Q How many bedrooms does the duplex have?

A One bedroom.

Q Would you say the studio is appropriate for one person?

A I have a single person in one and a couple

in the other.

Q You have a couple in the other studio?

A That's correct.

Q Do you pay for utilities on your apartments? By that I mean are the utilities charged to the tenant or do you pay them?

A I pay the gas and they pay the electricity.

Q You pay both gas and electricity?

A No. I pay the gas for the tenants and they pay their own electricity.

Q Would you describe your units as levels which are low income units as you understood that term when you were previously talking about that 70/30 allocation?

A Well, certainly if a person were --

Q I think it can be answered yes or no, Mr. Hudgins.

A I don't think it can, counsel, because if the person applying for the apartment were to receive some of the subsidies that they receive in other buildings, then a low income family could move into the house.

Q What subsidies are you referring to?

A This isn't my field so I don't know them by name, sir.

Q I believe you testified that you read the Urban Renewal plan at one time, did you not?

A That's correct, sir.

Q You read it thoroughly, carefully?

A I think I did, yes.

Q I believe you testified that the proposal for the 70/30 allocation was in the Urban Renewal plan?

A To that I answered I do not recall if it was specifically stated. I saw that it was stated that the area would be economically integrated and my con-

THE COURT: Just take a seat and raise your



versations with Mr. Clark, Mr. Hunter, Mr. Luria and Mr. Sherry were all in substantiation of my belief that they would be 70/30.

Q What about your contract that you signed I believe in July of 1971, is that correct, the contract for your brownstones?

A That's correct, sir.

Q Was the 70/30 allocation stated in your contract?

A No, it was not.

Q Do you know approximately how many families live on your block that own brownstones like your own?

A No, I have never counted really.

Q Are you a member of a block association?

A Yes, I am.

Q Can you give me an approximate figure?

A If you give me a moment, I will try to get that figure together in my mind.

Q Let me ask you this: How large is the membership of your block association?

A About 30, 40 people.

Q Do they constitute people only on that block, 94th Street between Central Park West and Columbus?

A That's correct.

and I am going to suggest that you break it up. Ask



Q Of those approximately 30, are they all brownstone owners like yourself or are they other categories of people in the block association?

A They would be other categories there also.

Q Tenants?

A Right.

Q Tenants as well?

A That's correct.

Q Tenants in your own building?

A Two are.

Q I believe you testified that Mr. Clark assured you that the squatters would be removed from the area, is that correct?

A That's correct.

Q Can you locate the date of that conversation?

A I can only say that it was in late '69 or early '70.

Q Did you have any subsequent conversations with anyone about the squatters?

A Yes. Also during that same period, a little later into '70, I talked with Bill Hunter, who took my wife and myself on a tour through the area. At that time the question was asked and again I was assured that this would be ended shortly.

THE WITNESS: May I give that?



Q Did you ask the question?

A Oh, yes, certainly.

Q After that particular conversation, did you follow up on it? Did you ask somebody again at a subsequent date?

A Yes, I did. When I was moving further into my construction, noting that there had been no change, I became concerned and that is when I joined the Continue group.

Q You say moving further into your construction. What is the date of that?

A Prior to the time I moved in is what I am saying.

Q Is that after the date of your contract of July '71?

A Yes, it is.

Q Are you familiar with an announcement -- withdraw that.

Are you familiar with the name of Albert Walsh?

A Yes.

Q I will identify him as the administrator of HDA at the time we are talking about.

A I am familiar with the name, yes.

gave me pamphlets, both of which I understand are



Q You know the name. Are you familiar with an announcement that Administrator Walsh made on May 28, 1971 about the Urban Renewal area?

A No, I am not.

Q I show you a copy of the announcement that I am speaking of, the date is May 28, 1971, and if you would please look at it, I wonder if you can tell us if it refreshes your memory.

THE COURT: First have it marked for identification.

A I do not recall.

THE COURT: Mark it.

THE WITNESS: If you could summarize---

THE COURT: Wait a minute.

MR. DOUW: Your Honor, I should say this was one of the exhibits of our motion papers which have all been put into evidence, but I don't believe it has been given a number.

THE COURT: That is what you showed him. Just let it be marked for identification even though it is returned to you. Mark it for identification.

(Defendant Exhibit J was marked for identification)

xxxx

THE COURT: All right. Now what were you

going to say, Mr. Witness, I cut you off?

THE WITNESS: No, the only thing, I asked counsel if he wanted to ask me a question, if he would summarize it for me because I do not know what it contains, sir.

THE COURT: All right.

MR.DOUW: With your Honor's permission I would like to take a minute for him to read it rather than have me summarize it --

THE COURT: It isn't in evidence. Are you offering it?

MR. DOUW: Yes, I am, your Honor.

MR. DOUW: I thought it was actually in evidence as a part of the motion papers.

THE COURT: You're right. If it is a part of the motion papers it is already in evidence and if you make that representation, that is enough for me. All right, then go ahead and read it.

I wish you would just confront him with a question. This paper to which you have just alluded in substance states such and such. Did you ever hear of that and so forth? That will be enough.

Q The long announcement, Mr. Hudgins, that states a number of points about the West Side Urban

Renewal area. Among them is an announcement about the squatters and it says that the squatters will be provided with renting agreements in the West Side Urban Renewal area, although I don't believe it gives a number.

Does that description refresh your memory?

THE COURT: Do you remember any such statement?

THE WITNESS: No, I do not.

THE COURT: Not only emanating from him, but emanating from any public official?

THE WITNESS: Not during that time.

THE COURT: All right.

MR. MORRIS: What was the date of that?

MR. DOUW: May 28.

May I have a moment, your Honor?

THE COURT: Yes, sir.

(Pause)

Q Just one further question.

Mr. Hudgins, are you one of the plaintiffs in this action?

A I appealed to the Court to be an intervenor. I do not believe that that has been accepted.

MR. DOUW: That is a sufficient answer, thank you.

THE COURT: Do you remember his name?

MR. MORRIS: May the record show that the Court has ruled on that and I don't think Mr. Hudgins knows about it.

THE COURT: That was ruled on last Monday.

MR. MORRIS: The Court has ruled that our motion was granted and you are now a party to the action.

THE WITNESS: I see.

THE COURT: Having been so informed, do you wish to alter anything that you have said in your testimony since you took the stand and been sworn?

THE WITNESS: No, I do not, sir.

THE COURT: Next question.

MR. DOUW: I have no further questions, your Honor. I would at this time like to renew my motion to strike that I made before.

THE COURT: Would you tell me exactly which motion? You mean the motion to strike with regard to his observations of conditions?

MR. DOUW: Certain observations which are conclusory in nature, which are judgments on his part, about the number of people in various economic classes that are on drug addiction. I could give your Honor after looking at the transcript, the particulars.

THE COURT: I just want to be sure that I

you have just testified about?

know what you are talking about and that you are addressing your motion to what I have in mind.

MR. DOUW: On the grounds that he is not qualified to testify as to these matters.

THE COURT: Your motion is denied for the simple reason that this witness was never presented as the fulfillment of that point. It wasn't just on his testimony that the issue was going to be resolved. He has contributed something on that issue and at the appropriate time the question will be whether or not there is enough in the totality of the evidence on that score, the small portion or the big portion of this witness, a small portion or the insignificant amount by another witness, whether all of that has any significance or enough significance to warrant remaining in the record.

So, therefore, at this time I deny your motion with permission to renew.

MR. DOUW: Thank you, your Honor.

THE COURT: Yes, sir.

Are you all through now with this witness?

MR. MORRIS: No, sir, I have some redirect.

THE WITNESS: No, sir.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Hudgins, in connection with your testimony with respect to the 70/30 ratio, I would like to clarify the record to make sure that we understand exactly what your testimony was.

Did you testify that that 70/30 economic mix applies only to new Mitchell-Lama buildings and rehabs and not to existing buildings which were unaffected by the Urban Renewal plan?

A That's correct.

Q That is your testimony?

A That's correct, sir.

Q You testified that you joined some block associations and that you joined Continue.

Would you tell the Court the circumstances under which you joined those organizations?

A Well, I joined the block association upon assuming residency in the area and I joined Continue very shortly thereafter because I felt that our block association was not strong enough as an entity to see that the plans that had been given by the City were fulfilled and I felt that Continue would be a better vehicle.

THE COURT: Yes.



Q Did you remain active in connection with the activities of Continue?

A Yes.

Q And approximately when would you say that you joined the Continue organization?

A March, April of '72.

Q It was about the time you moved into the property that you owned?

A That's correct.

Q And have you been a member continually since that time?

A Yes, I have.

Q Are you a member at the present time?

A Yes, I am.

Q Now, did you give any consent to any change in the Urban Renewal plan at any time?

A No, I did not.

THE COURT: Directly or indirectly?

THE WITNESS: Neither, sir.

THE COURT: All right, the answer is no.

THE WITNESS: Yes, sir.

MR. MORRIS: That is all, your Honor.

THE COURT: Anything further before I excuse the witness?

you have to do.



MR. LAND: I have nothing further.

THE COURT: Anything else, gentlemen?

MR. GOLD: Yes, just a couple of questions.

RECROSS EXAMINATION

XXXX

BY MR. GOLD:

Q Mr. Hudgins, are your brownstones in the pilot project area?

A Yes. Yes, they are.

Q They are?

A Yes.

Q Is it your understanding, sir, that whenever there is a change in the Urban Renewal plan your consent is required prior to that change being made?

A That is my understanding.

MR. GOLD: One moment. The Trinity contract.

Q Mr. Hudgins, as part of Plaintiff's Exhibit 14 there is attached a document entitled "Amended Urban Renewal plan, fourth revision, West Side Urban Renewal area," and it is dated March of 1966.

Is this the Urban Renewal plan to which you referred earlier in your testimony that you were familiar and had read?

A I said my attorney had read certain papers. I cannot answer that question. I do not know.

Q Then I will ask you again, sir: Did you ever read the Urban Renewal plan for the West Side Urban Renewal area?

A Yes, I read literature that had been published —

Q No, did you ever read a document entitled "Urban Renewal Plan, West Side Urban Renewal Area?"

A Yes. Yes, I did. I was a little confused.

Q I ask you is this the document that you referred to when you said you had read an Urban Renewal plan for the Urban Renewal area?

A I would not know if that is the same as what I read.

Q You are not sure whether it said fourth revision or March 1966 or some other date?

A No, I am not.

MR. GOLD: I see.

Q Have you ever read what is commonly referred to as a pilot plan, a pilot project plan for the West Side Urban Renewal area?

A I don't know it by name. I would have no way of knowing without being refreshed.

Q Do you know how many brownstones in the West Side Urban Renewal area were sold by the City to private persons like yourself and were rehabilitated?

Q Is it what might commonly be called a rooming



A No. The majority I know were either sold or converted by the New York City Housing Authority.

Q I am just asking you for a number.

A I don't know the number.

MR. GOLD: Nothing else.

THE COURT: Is there anything else, gentlemen? Mr. Morris, anything further?

MR. MORRIS: That is all.

THE COURT: Before you leave the stand, Mr. Hudgins, this is not too important, but I regard it as of value in weighing your testimony. As I understood it, you are now employed by some insurance company or casualty company.

THE WITNESS: That's correct.

THE COURT: Insurance?

THE WITNESS: That's correct.

THE COURT: What is the name?

THE WITNESS: Aetna.

THE COURT: Aetna, of course. How long have you been identified with that company?

THE WITNESS: Two years, sir.

THE COURT: May I ask what exactly are your dutires?

THE WITNESS: Surely.

of renovation, until 1967.



THE COURT: What is your function?

THE WITNESS: I am the marketing manager for one of the subsidiaries which is called Aetna Capital Management and we, our business is that of managing pension and profit sharing plans for corporations, municipalities and college endowment funds.

THE COURT: Your particular duties with regard to that overall objective are what? Do you prepare the plans or do you sell the idea?

THE WITNESS: I market the product.

THE COURT: I see. Thank you very much.

THE WITNESS: Thank you, sir.

THE COURT: You are excused.

THE WITNESS: Thank you.

(Witness excused)

MR. MORRIS: This witness was sworn earlier in the trial, your Honor.

THE COURT: But he has been away for a period of time, the better practice is to re-swear him.

MR. MORRIS: Thank you.

J E R O M E L . F I N E , called as a witness, being first duly sworn, testified as follows:

at the beginning of '67 we let the tenants know -- they



THE COURT: Just take a seat and raise your voice, please, and answer yes or no when you can and don't volunteer any testimony.

THE WITNESS: Yes, sir.

MR. MORRIS: May the record show that Mr. Fine testified previously in this trial and his testimony is to be found at page 133 through page 170 of the record in this case.

THE COURT: Yes, sir.

MR. MORRIS: Through page 170.

DIRECT EXAMINATION

XXXXX

BY MR. MORRIS:

Q You testified in your earlier testimony several months ago that before you entered into the agreement for the purchase of your brownstone that you had conversations with various City officials in the office located in the West Side Urban Renewal area? Do you recall that testimony?

A I do.

Q Would you tell us who you had those conversations with, where you had them and approximately when and what was said in substance by the various people present?

THE COURT: Well, that is quite a big order

A Yes.



and I am going to suggest that you break it up. Ask those same questions, but certainly take it one area time, Mr. Morris.

MR. MORRIS: Yes.

THE COURT: Try it out, will you.

Q Did you have conversations with various people in the City office in the West Side Urban Renewal area? Yes or no.

A Yes

Q Who did you have those conversations with, can you tell us?

A Notably Mr. Hunter and Mr. Luria.

Q Were they located in the West Side Urban Renewal area office?

A Yes.

Q Approximately when did you have those conversations with them?

THE COURT: You see, Mr. Fine, what Mr. Morris is doing is kind of generalizing it. I would prefer that you would understand that what we are all endeavoring to do is to get you to tell us what is your sworn testimony with regard to conferences that you have had with people representing the government with respect to this Urban Renewal project. You understand that?

THE WITNESS: May I give that?

THE COURT: Yes. All we want you to do, however, is to make it piecemeal. These lawyers for the other side have got a perfect right to know who you are talking about, who was there, where it took place, what was said on that particular occasion and then their undoubted[ly] was an adjournment or you saw one another on occasion and you have to fix each date as closely as you can and give us the substance, if not the exact words, of what was said on each occasion.

Now, that is quite a big undertaking, but that is what Mr. Morris is endeavoring to elicit. You understand that?

THE WITNESS: Yes, sir.

THE COURT: Take the first one, do you remember it, what date it was, approximately?

THE WITNESS: In the fall, October of 1964 there were two or three meetings between October of '64 and between the beginning of '65. The substance of the meetings were that Mr. Haldenston, who I was using as a broker to purchase the housing, had showed me the neighborhood and several houses, took me to the Urban Renewal office in the area and I spoke with both Mr. Hunter and Mr. Luria. Both of them showed me and

gave me pamphlets, both of which I understand are exhibits here, I can point them out, they are blue on cover, which specified the nature of the neighborhood.

They also had large maps on the walls. They showed me on the maps and in the pamphlets told me specifically what the plans were for the sites designated for the area.

THE COURT: Look you are an intelligent looking man. What was said, even a high school boy could give me an answer to that. What was said?

THE WITNESS: I was told that this was the first Urban Renewal area in which they were looking for economic integration which would then force ethnic integration and in which the individuals who had lived in the area, provision would be made for their return to the area as the area got completed, so it would not be an Urban removal situation.

They were looking for this to combat deteriorating conditions in the City and I was told that in the new housing that would be going up, there would be a loading of approximately 20 to 30 percent low income provision made within all the new houses except for a few houses which would be all low income.

THE COURT: Who was speaking, who told you

all of that?

A Both Mr. Hunter and Mr. Luria. Two were present at two of the meetings and then I saw each one separately.

THE COURT: All right.

Now, would yoube good enough at two of the meetings, were they the first two meetings that you had with these two personages?

THE WITNESS: They were.

THE COURT: All right. The second meeting, do you remember particularly how that differed, ifit did differ at all from the first conversation you had with those two gentlemen?

THE WITNESS: There was no difference in fact of what I just spoke of. The second meeting really was to make sure I had heard right and to find out what the approximate time schedule of the building would be since my building that I was thinking of buying was in the north end, I am sorry, the south end of the area and was to be built in the later stages, I wanted to know when I could expect the area adjacent to my building to be completed.

THE COURT: What were you told?

THE WITNESS: They really did not have any

time schedule. They were hopeful at that point it would be completed by 1970.

THE COURT: Do you remember anything else that was said on that occasion?

THE WITNESS: No different from what I mentioned before, your Honor.

THE COURT: Then you say you saw them singly?

THE WITNESS: Yes.

THE COURT: How long after this last conference did you see one of them, one of these two people, Luria or Hunter, how long after this last meeting in which you wanted to know the time schedule?

THE WITNESS: Perhaps a month.

THE COURT: Where was that, in the same office?

THE WITNESS: In the same office, sir.

THE COURT: Who was the one you talked with on that occasion?

THE WITNESS: I spoke with Mr. Luria.

THE COURT: Was anybody present besides you and Mr. Luria?

THE WITNESS: His assistant. I was asking about financing --

THE COURT: Just answer my question.

MR. LAND: Your Honor, I would like to have

THE WITNESS: Assistant.

THE COURT: Do you remember his name?

THE WITNESS: No, I do not, sir.

THE COURT: Did Mr. Luria talk with you on that occasion or did you do the talking?

THE WITNESS: We both talked.

THE COURT: Who began it, do you remember?

THE WITNESS: I did. I said that I was interested in finding out about financial assistance in the renovation of brownstones.

THE COURT: Yes, sir.

THE WITNESS: And he told me of two or three plans that would be available.

THE COURT: Yes.

THE WITNESS: And I took the information and I think we chatted about the weather and I left.

THE COURT: Was there anything else on any other subject, any other item that was taken up on that occasion?

THE WITNESS: No, sir.

THE COURT: Then thereafter you say you had a talk with the other, Mr. Hunter, is that it, singly?

THE WITNESS: No, I believe again it was with Mr. Luria.

A They were -- I had known because the signs were

THE COURT: How long after the conference you have just testified about?

THE WITNESS: Oh, that was a good few months longer. Several months longer.

THE COURT: That brings us to about what time?

THE WITNESS: That brings us to May, June -- somewhere in the spring of '65.

THE COURT: All right. Who was present on that occasion?

THE WITNESS: My wife, myself, Mr. Luria and a gentleman that was working in the plans division of the local Urban Renewal office.

THE COURT: Do you remember his name?

THE WITNESS: No, I do not, sir.

THE COURT: Tell us what was said and who said it on that occasion.

THE WITNESS: We spoke then, I came in for information about the different kinds of plans that might be available for renovating a house and they produced some sample plans which they gave me to show me what may be done to get various numbers of apartments within a house.

THE COURT: Anything else that you remember

Q And they are still there now?

that was said on that occasion?

THE WITNESS: No, sir.

THE COURT: All right. Mr. Morris.

Q Dr. Fine, I show you Plaintiffs' Exhibit 13 entitled "Rehabilitation in the West Side Urban Renewal area" and ask if this is one of the brochures to which you referred in your testimony a month ago?

A Yes, sir.

Q I show you Plaintiffs' Exhibit 10, "West Side Urban Renewal area, a summary of the final plan" and ask if this brochure was shown to you as well?

A Yes, sir.

Q At the time these were shown to you, did you have any discussions with the people with whom you discussed the plan as to whether the plan would be carried out in accordance with the provisions of these documents that had been shown to you?

A There were very specific questions on my part as to that --

THE COURT: Let me be the judge of that. What did you say? What do you remember?

THE WITNESS: I asked them specifically whether any changes had been made from the plans that they had showed me both within the booklets and on the

that I saw move in initially looked like Spanish-speaking--- maps on the walls.

THE COURT: Yes.

THE WITNESS: They told me, no, and things were proceeding quite well. They did not anticipate any changes.

THE COURT: At any one of these conferences was there anything said with regard to possible changes of any nature?

THE WITNESS: Not at those conferences, no, sir.

THE COURT: When you say not at those conferences, did an occasion come when you were informed that changes were contemplated?

THE WITNESS: Much later, 1970, sir.

THE COURT. All right, that I willleave to Mr. Morris. I do insist, Mr. Morris, please, each one has got his own way, but the law enforces, I think you will find, a simple way that the Court tried to develop and that is the defense are entitled to details with regard to each conference and the witness must -- you must exhaust his recollection so that they can have an opportunity to cross-examine him with a certain degree of thoroughness. These generalities you can pretty near send a guy away for life if that is all

you have to do.

They are entitled to particularities and I insist that they have the entire picture that you maintain took place. All right.

Q Did there come a time when you made a decision about going ahead with the acquisition of a brownstone in the West Side Urban Renewal area?

A Yes, sir.

Q Will you tell us when that occurred?

A Early in 1965.

Q Early in '65. Subsequent to the conversations you have testified to in response to his Honor's questions?

A That's correct.

Q Would you tell us what occurred at or about that time with respect to your entering into a contract for the acquisition of the property and describe the property for us?

A The property is located at 115 West 88th Street. It is a 18 wide American front, four story brownstone.

It was purchased privately. The broker was Mr. Haldenston.

Q Is that Alden Haldenston?

A Yes.

June of 1970 when two of three families were moving. This



Q Yes, proceed. Would you describe the building at the time you made th purchase?

A The building was a single room occupancy Class B dwelling.

Q Would you tell the Court what you mean by a single room occupancy building?

A It was a building that housed -- that had individual rooms occupied by individuals essentially single rooms in the main except for two apartments, the bathroom facilities were floor bathroom facilities to be jointly shared by the residents of a particular floor.

Q Is it what might commonly be called a rooming house?

A I don't know. I assume so.

THE COURT: How many people occupied it?

THE WITNESS: There were 12 apartments, actually 13 apartments, in the house.

Q How tall is the house?

A Four stories.

Q And how many people would you say were in occupancy at the time you acquired title to the property?

A There were 14 people in occupancy.

Q What did you do when you acquired title to the property?

A The owner and his wife had been operating as the superintendent for the building. They occupied the entire first floor and the back garden.

I was concerned. I wanted the tenants taken care of. So I found a couple who wanted the apartment and were willing to be around but where the husband could work but they would have it rent-free for operating as the super, in a sense, to the building; and I maintained the rest of the house as best I could, made what repairs were necessary, and so on.

We maintained it for two years before we thought

has said, I think it is admissible under the res gestae of renovation, until 1967.

THE COURT: Would you develop again for me when he started to operate that building?

Q Would you give us the date you took title and took over the building?

A February 1, 1965.

Q Did you vacate the tenants who were in occupancy at the time you took possession?

A No, we did not.

Q In other words, you maintained the building and continued to collect rents and operated the building as the owner of it, is that correct?

A That's correct.

Q Now, that continued, you said, for a period of two years?

A That's correct.

Q And would you tell us when you came to the point or when the subject of renovation came up and you made a decision in connection with the renovation of this building?

A We had made a decision to renovate the building when we purchased it. We waited approximately two years, at which time we hired an architect to draw up plans which had to be approved by the urban renewal area. And

THE COURT: About what date was this?





at the beginning of '67 we let the tenants know -- they had known all along that we had intended to ultimately renovate. At the beginning of that year, we let them know that we wanted to start renovation at around September of '67.

Q Beginning of what year was that?

A Beginning of '67 we told them specifically that by September of '67 we would like to renovate, at which point we helped them to look for apartments.

Most of them were not covered by City relocation. A few were. And we paid the City a certain amount of money that they would help relocate also.

Q And did there come a time when the building was completely vacated?

A That's correct.

Q And can you tell us approximately when that was?

A I believe it was about August of '67.

Q August of 1967?

A Correct.

Q And did you then participate with the architect in the preparation of plans for the renovation of the building?

A Plans had been completed by then, yes.

Q Plans were completed?

A Yes.

Q Did you then participate in the procedures required for the actual physical renovation of the brownstone?

A We hired a contractor.

Q Did you, yes or no?

A Yes. I don't know what you mean exactly.

Q Would you tell us what you did when you proceeded with the actual renovation of the brownstone?

A First we had the plans approved.

Q Who were the plans approved by?

A Well, the architect had to have the plans approved by the City to get a building permit. We had to have the plans approved by the West Side Urban Renewal Area because it had to comply with certain regulations they had.

THE COURT: And you got that approval?

THE WITNESS: Yes. I have the plans here, as a matter of fact.

THE COURT: You got it?

THE WITNESS: Yes.

THE COURT: The renovation was to follow what lines, Mr. Fine, in a general way, not in great detail?

THE WITNESS: We were renovating so that we would be a two-family home. The first floor would be a

rental apartment with a back yard and there would be a triplex for myself and family.

THE COURT: There is an answer. Next question.

BY MR. MORRIS:

Q And did you proceed to do the physical renovation and tell us when you started the actual physical renovation?

A We started in September, 1967. We haven't ended yet.

Q Did you retain a building contracting firm to do that?

A Yes, we did.

Q And what was the name of the firm that you retained?

A He started out as being Fred Weiss Industrial---Fred Weiss Central Industrial Contracting Company. Midway through he changed the name or changed the company that was working on it to Alteronics.

Q And what occurred with respect to the actual physical alteration or renovation of the property? How long did that proceed?

A Well, as I said, it is still proceeding. It was almost livable when we moved in.

Q Tell us when you moved in.

A We moved in in January of 1969.

Q What occurred with respect to the building during the period from the time the building was vacated in September of 1967 and January of 1969? That is a period of about a year and a half, is that right?

A Yes.

Q Did it take that long to make the actual renovation itself?

A It ook more time than that. The renovation was not completed when we moved in. The renovation was slow because of great troubles we had with our contractor. It was also slowed down because --

MR. LAND: I don't know what the relevance of this testimony is. I don't know that it has anything to do with plaintiffs' claim in this lawsuit, the renovation of his home. We concede he bought a brownstone, that it was renovated.

THE COURT: What do you say, Mr. Morris?

MR. MORRIS: I thought it would be helpful to the Court to hear the nature and extent of the renovation that was made.

THE COURT: Yes, in a general way, but they are right when they say, "What do we have to know whether it is caught up, whether he has completed it yet, what

has he yet to do and all that. I don't need that, really.

MR. MORRIS: All right.

THE COURT: Mr. Land is correct. Next question.

Q When did you actually move into the building?

A January of 1969.

Q And was the building completed at that time?

A Not quite.

Q But it was livable to move in?

A Correct.

Q What did you do about renting the other apartment in the building?

A The apartment was not in rentable condition until September of 1969. We rented it at that point.

Q And has it remained rented since that time?

A Yes, it has been rented since then.

THE COURT: Yes is the answer. Next question.

Q Have you been in possession of the part of the building allocated to yourself from the time you moved in until the present time?

A Yes.

Q During the time that you made your decision to acquire this brownstone, did you make any investigation of the area in which the property was located and what was happening with respect to that area?

A Yes.

Q And would you tell us what investigations you made and what you did to find out about the area and what was happening there?

A In addition to the meetings I have already mentioned with the members of the HRB at that time, I believe, my wife and I took numbers of walks around the area, spoke to several people living in the area, and this was a constant process even after we purchased the brownstone. We continued to sort of roam the area on weekends when we were able to.

Q And what was the purpose of your roaming the area? What were you seeking?

A You know, this was a whole way of life to us. It represented a tremendous commitment emotionally as well as financially and we were interested in it. We wanted to become part of the community. We would have renovated earlier if we had had the money. We didn't. So we had to wait. But we were anxious to become sort of part of that area and all that it stood for in our minds.

Q And after you moved in, did anything occur with respect to squatters coming into the area?

A That was a year and a quarter later.

Q Tell us what occurred at about the time squatters

came in. Tell us when that was.

MR. LAND: Your Honor, I would like to have the witness testify only as to his personal observation and knowledge.

MR. MORRIS: Yes, your Honor.

THE COURT: Objection sustained.

MR. MORRIS: I only asked as to his personal knowledge.

Q Tell us what you know yourself with respect to the squatters, not what you heard someone else say.

Would you tell us what occurred that you observed with respect to the squatters and tell us approximately the time that you are speaking of?

A April, 1970, groups of people later identified as squatters moved into the houses adjacent to my building, not directly adjacent. They moved into 103, 5, 7 and 9 West 88th Street.

Q Are those buildings that you are describing on the same side of the street and in the same street in which you were living at the time?

A That's correct.

Q And did you observe these occurrences yourself?

A I observed people moving into those buildings.

Q Would you describe the buildings they moved

into? Tell us what kind of buildings they were.

A They were -- I had known because the signs were up and I had checked with other people. They were City-owned old law tenements that were being vacated for new buildings, for new construction.

Q For demolition, you mean?

A Yes.

Q Were they standing there with no demolition actually under way?

A Yes. There were still a few families living in the building.

Q Then tell us what happened with respect to these people that you saw move in.

A Well, there was great excitement when they moved in. They created a sort of a crowd of people on the block, and I was threatened because I was standing and looking at them and I asked somebody what was going on and he said, "You know, you had better get out of here and mind your own business. It has nothing to do with you."

He got kind of rough about it, and I left.

Q And did you observe anything else about these squatters? Did you observe that they continued to live in the building?

A They continue to live there now.

Q And they are still there now?

A Yes.

Q Can you give the Court some idea as to approximately how many of these people you personally observed moving into these buildings?

A The first time I can't say more than several. I don't know.

Q How many?

A I saw at least several come in. They came in in groups of families. I really don't know what constituted a family unit.

Since that time there has been a constant turnover. I have seen any number of people over the years since then moving out and moving in.

Q And have you personally observed them moving out and moving in?

A Of the times I have seen it, I have observed it, yes.

Q Would you give the Court a description of your observation of the people who were moving in, the type of people, the kind of furniture and various other physical aspects of what you yourself observed in connection with these squatters moving in?

A I don't know if I can do that, sir. The people that I saw move in initially looked like Spanish-speaking -- they were Spanish speaking. I heard them speak Spanish -- families, family groups, essentially, that I saw move into the houses whose numbers I have given. They seemed to have decent furniture. They had beds and mattresses and they had tables and they had television sets and they certainly had a lot of cars.

They had a lot of children. There have been different people that have moved in since. It is clear to me that a number of individuals who have moved in in the last year, for example, have been families that seem to have been poorer than the original families that came to the house at that point.

MR. DOUW: Objection.

THE COURT: Objection sustained. Strike it. It is meaningless, really.

Q Were the police called at any time in connection with what you observed with respect to the squatters?

MR. LAND: Objection to the form of the question.

THE COURT: Objection sustained.

Q What else occurred with respect to --

THE COURT: What else did you observe?

Q What did you observe with your own eyes?

A I spoke to a policeman who was on the scene and said, "What's happening?"

He said, "There are people moving into houses"---

MR. DOUW: Your Honor --

THE COURT: I will take it subject to a motion to strike.

A He told me there were families moving into several houses in the area. I said, "How come ? How come they can be moving in Do they have permission to go in? My understanding is the building will go down."

The policeman said they can't go in unless there is a complaint, and there was no complaint made. I found out subsequently about that.

THE COURT: I don't see how that is legal evidence and I don't see how it can stand, Mr. Morris.

Motion granted. Stricken.

Short recess.

(Recess.)

BY MR. MORRIS:

Q Dr. Fine, was there an occasion when you were threatened with a knife in the area?

A Yes.

Q Would you tell us about that?

A That happened in around June. It happened in

June of 1970 when two or three families were moving into 103 West 88th, and I stood there and I questioned one of them as to whether or not -- why they were moving in, who told them they could move in there. One of them pulled a knife on me and said, "Just get out of here and mind your own business or you will get this."

And I left.

Q Would you specify for the Court the changes that you observed, if any, before and after the squatters came on the scene?

A Prior to the squatters moving into the area, the area had risen greatly. There was a great deal--- the blocks had been -- I am talking about my block, because I am most familiar with that -- our block had been cleaned up.

In 1967 when I first moved in there were still a number of individuals, a lot of broken bottles on the street, a lot of garbage, there were people that I saw literally give themselves shots in the arm, and it was rather dirty and it wasn't a very pleasant place to live in.

The blocks had an association that was strong. We got together, we worked with the Police Department, and the block was cleaned up. As a matter of fact, just

the Sunday sun before the squatters came in we had a block planting party. We were p.. .ting all the trees around around the trees on the street. We were putting flowers in. After the squatters came in there was a great deal of fear and tension that I felt and my neighbors felt.

MR. LAND: Objection to the neighbors feeling, your Honor.

THE COURT: Hold it a second. When you say neighbors felt, is this the result of talks you had with the neighbors?

THE WITNESS: Oh, yes.

THE COURT: Gentlemen, I do not know for sure, but I am under the impression that this kind of evidence may be received of a general nature without spotting it the way the law would in this with regard to an individual act. If I am wrong, we will strike it, but I think that this kind of thing is comparable to pornographic material, the general reaction of people. Many times a witness will say "Groups of people" without identifying them and that has been held admissible. I will take it and see where we get with it. If I am wrong, why, it will not be too late to strike it. I will take this particular phase.

MR. MORRIS: To supplement what your Honor

has said, I think it is admissible under the res gestae rule. That is the basis upon which this witness I think is giving that testimony. It's a description of what occurred at the time of the occurrence and whatever is said is not said for the truth of what is said.

THE COURT: What occurrence?

MR. MORRIS: Sir?

THE COURT: What occurrence?

MR. MORRIS: These various occurrences he is testifying to.

THE COURT: The Court is with you until the Court is enlightened to adopt a different approach. All right.

What did the neighbors say?

THE WITNESS: The neighbors both privately and in several meetings at the block association had were very frightened. We all felt that the group that had come in were very hostile to us. We found various acts of vandalism. For example, in my own building windows were broken, garbage was steeped inthe inner hall of my house literally so that I couldn't get in one day. Shrubbery that had been planted -- I mean big shrubbery was removed from the outside several times. None of this had happened prior to that time.

THE COURT: About what date was this?

THE WITNESS: I am talking about the year following the squatters coming in in particular.

THE COURT: That would bring us to about what time?

THE WITNESS: '71.

THE COURT: Now Mr. Land.

MR. LAND: I would think the implication Mr. Fine wants the Court to draw was the squatters were the perpetrators of these particular acts about which he is testifying. Unless, your Honor, he can say I saw a certain individual who I saw residing in the building across the street do this particular act, I don't see how his statement as to "I found garbage in the hall, I saw a broken window" can be evidence in this trial with respect to squatters.

THE COURT: What do you say?

MR. MORRIS: I say it evidence is not only related to the squatters but the evidence is related to the entire condition of the area.

THE COURT: Precisely. On that basis alone I would have the right to take it, I should think. At any rate, objection overruled. It stands.

THE WITNESS: On one occasion in May of 1971,

I was coming home from work and from down the block I saw some children throwing firecrackers. My wife came out of the house with our two year old daughter and they threw some firecrackers at a puppy we had gotten and I could see her point at them and then I could see two of them throw firecrackers at my two year old daughter. It is in the newspaper. I have a clipping. I chased them. They ran around the block and into the house on 89th Street on the northwest corner, and I asked some other children who were there did they live in the house and they said yes, they lived in the house. They told me the apartment number but I didn't go up. In the back yard the same group of children that I have seen for the last year or two continually have thrown rocks, shot bebees through my windows. Practically all the windows in the back of my house have had to be replaced by Lexon so they would not break. I have had bricks and bottles thrown through my front windows. At one time there was a party and a bottle got thrown through the front of the window into my living room and smashed on the table and cut a few people. We have been unable to use our back yard because the back is on a playground yard which the children used to climb over the fence regularly and have access to the

back of our houses where there were several break-ins, but they keep on throwing debris over and they harass people who go into the back yard at any time.

We finally got the City several months ago to put up a new higher fence that has a curved top so that it is not too easy to climb over. The police reports substantiated our allegations. The block association pressed for this fence, by the way.

There have been innumerable incidents and the tenor of feeling on the block os one essentially of concern and fear and watchfulness all the time, which is quite different than it was prior to April 1970.

Q Now, do you have occasion to hear obscene language used by people in the area?

A Yes.

Q Does that happen frequently ?

A Very frequently.

Q And in connection with garbage, do you see garbage distributed around in the streets and in the back yard?

A The garbage in front of the buildings 101 through 109 is constantly overflowing, and along with dead rats. That's the situation. It is an incredible mess. In addition to that, a number of the children

that play at that corner go down the street, and just the other day, as I was going to work, a child who came out of one of the buildings, I think it was 109 but maybe 107, walked down the street and knocked over the garbage can in front of each of the houses, the brownstones, on his way to the corner. I remonstrated with him. I told him to cut it out after he did three or four of them and he cut it out and then ran down to the corner.

But that kind of thing is what happens regularly. We put our garbage out three times, the same garbage. We put it out in a bag and then we have to put it in another bag because it has been ripped open and thrown around.

Q Do you have to clean your back yard constantly because of garbage being spread out there?

A Yes. We clean it now less often than we did before because we don't use it now.

Q Are you able to use your back yard in view of the conditions that you just described?

A Well, typically when we started to use it, again until April of '70, prior to that we used it and our tenants used it and after that, very shortly after that, it became very difficult because a bunch of children would congregate, they would throw things over the fence and they would curse and sort of harass and make general nuisances of themselves, so that it wasn't a very comfortable place to be when you are being called names and so on.

Q As a result of that, did your use of the back yard diminish?

A Totally.

Q Totally?

A Totally.

Q How often would you say you have used the back yard over the period of the last year or so?

A I haven't.

Q You haven't used it at all?

A No.

Q And the back yard just sits there and it is not used, is that right?

A Not used.

Q Was there an occasion when a rifle or a beebee

gun was fired into the area that you are connected with?

A Yes.

Q Would you tell us about that?

A It was one evening my wife and I were in bed and we heard a pop and there was a round hole through the window, which I assumed was a beebee. It was either a beebee, I doubt if it was a rifle or I assume we would have found it embedded in some place. I assume it was a beebee gun. I have seen children on numerous occasions playing with air rifles and several times I asked them to direct it at some place other than the buildings that they were aiming at.

Q Did you have contact with a person by the name of Bob Price?

A Bill, William.

Q Bill Price?

A Yes.

Q Will you tell us what your contact with him was?

A My first contact with William Price was within a week or two after the squatters moved in in April of 1970. The West 88th Street block Association called a meeting and had invited Bill Price, who was supposed to be among the organizers of the squatter group, to come and to talk to the block association and to bring particularly

some of the quatters that had located themselves on our block.

We simply wanted information. We still didn't know what was happening and we were anxious to find out what was happening.

He came to the meeting and brought a Mrs. Bruno, who at least later was identified as, I think, head of OMI, which the squatters were formally made into.

Q What does that stand for?

A Operation Move-in.

Q Yes, go ahead.

A They presented -- they were asked questions and presented their point of view at the meeting where they acknowledged that few of the people that came in were legal relocatees, but that most of them had come from --

MR. DOUW: Objection.

THE COURT: I will take it. Let's hear it first and you can always make a motion to strike.

A Most of the families were families that were in desperate need of housing who had come from south of our area in the seventies, and lower eighties, where Mr. Price's organization, Community Action, Inc. was located; that he and several members of his group on their own time had helped these people to form the Operation Move-in and get

THE WITNESS: This was the beginning of



into apartments that were at least reasonable and habitable and to take care of the people that had been thrown out by, as they said, unscrupulous landlords from the area south of us or had terrible apartments inthe area south of us.

Q Did a time come in connection with your occupancy in the West Side UrbanRenewal area where you joined any groups in connection with efforts for the betterment of the area?

A In May --

Q Yes or no.

A Yes.

Q Would you tell us what those organizations were and when you joined them, the approximate time?

A We did not feel we had satisfactory answers to the questions we asked Mr. Price and Mrs.Bruno --

THE COURT: Mr. Fine, this calls for names and dates.

A Yes, I was --

THE COURT: I know, but you are now making a speech and that is not testimony. I know you don't seem to be happy about these things, but there are rules of law that we have got to observe. You get them changed some day and then we will go according to the changes, but until

they are changed, I have got to operate the way the law says. The law says don't let the witness do things like that, Judge. Don't sit there like a wooden Indian, so I am trying not to sit like a wooden Indian.

Now go ahead.

A Early May 1970, a group of representatives from brownstones, brownstone owners and block associations met at the home of Fritz and Lisa Levy, West 94th Street, for the purpose of, if necessary, developing an organization to be more active on behalf of seeing that the Urban Renewal plan as we know it was completed. We felt threatened by the actions of Operation Move-in and the city not doing anything about it.

THE COURT: Was an organization formed?

THE WITNESS: Yes, the organization is called

CONTINUE.

THE COURT: All right, when was that started, as you best recall?

THE WITNESS: Early May 1970.

THE COURT: Have you been actively identified with it?

THE WITNESS: Yes.

THE COURT: Very well.

Q Would you tell us about your association with

to the trial at issue here. These internal battles



the group?

A I was president of the organization until fairly recently. Then I was co-chairman and then I have been chairman of the organization. I still am chairman.

Q Are you still connected with the organization?

A Yes, I am still chairman.

Q You know, incidentally, that the Court granted the motion giving CONTINUE leave to intervene in this action and CONTINUE is now a co-party plaintiff in the action.

Now, would you tell us what activities occurred through CONTINUE in connection with the efforts to bring about a betterment of the West Side Urban Renewal area?

A CONTINUE operated at first as an information-seeking group, a frustrated information-seeking group, I might add. It took a long while before we were able to have meetings with anybody of merit and I don't know whether it was HRS or HDA at that time.

Q It was HDA?

A I thought it was HDA at that time.

MR. GOLD: Your Honor, I object to the use of the words"anybody of merit."

Q Would you tell us --

MR. GOLD: I am not quite sure --

A I can be specific.

was a group that belonged to Continue. They had a



THE COURT: Hold it. He has a right to voice an objection.

Objection sustained. Strike it.

THE WITNESS: The only individuals in the city administration we had been able to meet with were our local representatives. They were not part of the city administration except for Councilman Weiss, who were able to afford us no help in terms of clarifying the situation.

We tried to meet with members, some senior members of HDA. We were able to meet with Mr. Williams who was at the local office and he was not able to help us and referred us to meet with some of the individuals that were from downtown, most senior people in the administration of HDA.

Q When you speak of downtown, you mean 100 Gold Street?

A 100 Gold Street.

Q Did you have any meetings at 100 Gold Street?

A Yes, we finally had a meeting.

Q Just a moment. Would you tell us what meetings you had at 100 Gold Street and when those meetings occurred? When was the first meeting you had at 100 Gold Street?

A The first meeting we had at 100 Gold Street was in the summer, July, I believe, of 1970.

Q Would you tell us who you met with, who was present?

A We met with Administrator Walsh, Commissioner Hazen, Deputy Commissioner, if he was then , Ollinger and other members introduced as his staff.

Q Would you tell us what occurred -- who appeared at that meeting on behalf of CONTINUE?

A There were several individuals. Myself, a Mr. Halpern, Roberta Gratz, Mr. Karlan.

Q Mr. Karlan, is that one of the plaintiffs in this action?

A Yes, that's correct. There may have been one or two others, I don't recall at the moment.

Q Would you tell the Court what was said in substance by you to them and the city people to you?

A Our concerns were that the construction in the urban renewal area would be postponed, delayed because the houses that were slated for demolition were now occupied by a large number of people. We wanted clarification as to whether delays would be made and whether this would affect the completion of the plan as we knew it.

We were also concerned with the living conditions of the squatters. We felt that if the city was going to keep them, allow them to stay in the building, that they

because it did not represent a major change in the Urban

ought to have more control both in terms of having leases and in terms of making the living conditions habitable for the people that were living there, so those were our major concerns.

Q What was said by the city people in response to those expressions on your part?

A The city agreed that they should have leases and should know better who was in the buildings and they had intentions of doing some renovation to the buildings to make them habitable. They had no intention of or did not know what effect the squatter group being there would have on the completion of the plan at that point.

Q Was there a discussion as to what the situation was with respect to the completion of the uncompleted sites in the West Side Urban Renewal area?

A There was discussion as to it. There were questions asked on our part.

The answers given were that were really "I don't know" answers. They were not committing themselves in any way to any questions about the future of the urban renewal area.

Q Were there any meetings subsequentto that?

A There were several meetings subsequent to that.

Q Would you tell us whether the next meeting

occurred and where it occurred and who was present?

A We had met with Deputy Commissioner Ollinger in September.

Q Of what year?

A Of 1970, and he assured us at that point that he felt that essentially the plan was going to be completed. But it might, frankly, take a bit longer than they had originally anticipated.

He thought there might be some changes, but he was not at liberty to tell us what those changes might be in the plan itself.

Q Did you have any further meetings?

A Yes. We had a meeting on October 23, 1970.

MR. LAND: Excuse me, your Honor, is Mr. Fine reading from something there?

THE WITNESS: Yes, I have notes.

MR. LAND: May we see those notes, your Honor?

THE COURT: Sure. Will you mark the notes for identification, Mr. Clerk.

He is holding them in his hand. Just mark them as a plaintiffs' exhibit for identification.

(Plaintiffs' Exhibit 37 was marked for identification.)

xxx

in substance?



MR. MORRIS: That is not our exhibit.

THE COURT: Yes, it is. It is your witness.

MR. MORRIS: But they asked --

THE COURT: It is your witness.

MR. MORRIS: I don't mind.

THE COURT: A paper marked for identification means nothing. It is not being marked in evidence. It is just to identify it. That was the paper he had in his hand at the time. That is all. Give it back to him.

Q Mr. Fine, I show you --

THE COURT: Give it back to him.

MR.MORRIS: I intend to, but I want to ask a question about it.

THE COURT: Please continue with the testimony.

Mr. Land, what do you want to say?

MR. LAND: May I see this paper that has been marked for identification?

THE COURT: Sure, but give him a chance first. It is not going to dissolve. I will keep an eye on it and I will throw out the case if there is any monkey business, how do you like that?

What is this? You will get your turn at it.

Go on, Mr. Morris.

Q Mr. Fine, I show you Plaintiffs' Exhibit 37

for identification and ask if these are notes which were prepared by you in connection with your testimony in court this afternoon?

A Yes.

Q Were they prepared at my suggestion?

A Yes.

Q In other words, I told you to prepare those, d I?

THE COURT: That is the impression I get from that answer.

MR. MORRIS: That is absolutely correct.

THE COURT: Thank you.

Next question.

A I think I was in the middle --

THE COURT: Don't you volunteer anything. The only one that can do that are the lawyers and they don't get away with it either.

MR. MORRIS: I have no objection to showing i to Mr. Land at this time.

THE COURT: He may see it if they wish. Usu they have to wait for cross-examination and then they cal for the paper and it has got to be produced.

All right, there it is.

at Sryker's Bay?



MR. LAND: Thank you.

THE COURT: All right, Mr. Morris, won't you please continue, unless you are through.

MR. MORRIS: No, I am not through, your Honor, but I thought counsel was looking at the paper.

THE COURT: That is because you do it your way and you interrupted the Court's way. I am going to save my own time. Let him have that paper back. Go on and complete your examination.

Counsel on the other side, according to the rules of evidence, if you want to know something about it, it is that they then may see the paper and not until that time.

Do you understand that?

MR. MORRIS: Yes.

THE COURT: And not until you offer it in evidence, is that clear?

MR. MORRIS: Absolutely.

THE COURT: Let's go.

Q Now, Mr. Fine, were there other meetings that occurred subsequent to the meeting you just described with Mr. Ollinger?

A Yes, we met with Mr.Aurelio in his office, Deputy Mayor Aurelio, in his office.

THE COURT: When was that?

THE WITNESS: October 23, 1970.

Q Would you tell us who was present at that meeting?

A There was myself, Roberta Gratz, Lisa Levy, Mr. Karlan, maybe one or two other people, Administrator Walsh. I am not sure, I think Commissioner Hazen.

Q Deputy Mayor Aurelio was there?

A Yes.

Q Would you tell us what was said at that meeting?

A We had great concern that HDA, because of a memo --

End 4A

THE COURT: The law is that you are not supposed to tell me that. That is what you say at a political meeting or some other meeting, but you cannot do it that way on the witness chair under oath.

Now, will you be a good fellow and just listen to the question and answer it just the way it was given.

Will you read it, please?

(Record read)

THE COURT: I said, he said, that is all it means.

A We said to Mr. Aurelio that we were concerned that additioanl sites were going to be given -- that were now designated for integrated housing would be given to low income housing. We were opposed to this.

We indicated that we now were much more concerned that the City did not have any policy; that they were enforcing towards the squatter group and we were concerned that they now would be given priority for apartments in the area above the normal priorities to be given for the low income apartments. We were opposed to that also.

We also felt that there were going to be needless delays in the building of the area, the

needed to get the apartments right then while the funds





building of the sites left in the area, and we were very much concerned that the area be completed as soon as possible according to plan.

THE COURT: All right, now that is what was said on your side, right?

THE WITNESS: Yes.

THE COURT: What was the answer, if any?

THE WITNESS: Mr. Aurelio was sympathetic.

THE COURT: What does that mean. Strike that. That has no meaning under the law. What did he say, if anything?

THE WITNESS: Mr. Aurelio said that it was the first time that he was aware of some of the issues that we brought up and he asked Administrator Walsh whether some of the things that we had mentioned were true particularly in terms of issues that had to do with additional low income housing and with the squatters and Mr. Walsh said that they were considering additional low income housing and that, although they had not come to any formal terms about what would happen with the squatter group, that that was now being considered.

Mr. Aurelio said that he would keep on top of it and to communicate with his office if we needed to do so in the future.

THE COURT: Now, do you remember anything else, Mr. Fine, that was said at that meeting?

THE WITNESS: No.

THE COURT: All right, next question.

Q Were there any other meetings, Dr. Fine?

A There was a demonstration on the 25th.

Q Would you describe what occurred at the demonstration. The 25th of what?

A October 25, 1970.

Q Would you describe what occurred on that occasion?

A A group of perhaps a hundred or more members of Continue demonstrated in front of Gracie Mansion bearing placards which indicated and chanting that we wanted Urban Renewal completed as originally planned. It was in front of the Mayor's mansion. We demonstrated for a few hours and went home.

Q Were there any conversations or any discussions with anyone in connection with that demonstration?

A Nobody from the Mayor's mansion came out.

Q What occurred after that?

A I will have to say what occurred before that. I forgot another meeting.

THE COURT: You can go back. What date?

THE WITNESS: Yes.



THE WITNESS: This was the beginning of October, the end of September of 1970 where Continue had its first membership meeting that was held at a private school on 95th Street. There was in attendance at the meeting 300 people that had come in and then there was an attempt made to break up the meeting so that about, oh, a large number of policemen had to come and move the demonstrators away and had to take the leaders of Continue home by car for, as they said, their protection.

Q When you say there was a demonstration --

MR. DOUW: Could we have a date on that?

THE COURT: Yes, of course. When was this?

THE WITNESS: Late September or early October of 1970.

Q Would you tell us who the demonstrators were that you described?

A The demonstrators were people who said -- who carried things on them, placards, indicating that they were from OMI.

Q What is OMI again?

A Operation Move In. When I came out there were a number of people that I recognized from Strycker's

insure an economic and therefore an ethnic mix and revitalize



ojw 5 Fine-direct

Bay that were there at that point. That was at the end. I don't know if they were there at the beginning.

Q How many of these demonstrating people would you say there were?

A Well, there must have been a good 75, maybe more.

Q How many people were there at the Continue meeting?

A There were 250 to 300 inside and when I looked outside there were a number outside that wanted to come in but couldn't because of the crowd of demonstrators around the front and then the police had set up lines which weren't letting anybody else in.

Q Did the demonstrators carry placards or signs?

A There were some signs like, you know.

Q Did you read any of the signs?

A Well, some were "Down with Continue" kinds of signs.

MR. LAND: Your Honor, I think earlier at one point you said we want to keep politics out of this trial. Mr. Fine is testifying as to political struggles apparently between two opposing groups as to views on the West Side. I don't really see now that is relevant

last two years, that we felt the income limits on 236 were



ojw 6 Fine-direct

to the trial at issue here. These internal battles between political demonstrations between two opposing groups.

MR. MORRIS: May I be heard on that, your Honor?

THE COURT: Yes.

MR. MORRIS: We respectfully submit, your Honor, that at the time Dr. Fine is testifying to was a time of great turmoil and struggle resulting from the squatters having come upon the area and the people who had made investments in the area seeing their investments being injured by what was occurring. They therefore took action and when they took action they met opposition from another group that had an entirely different approach, which was to bring more low income families in. That is one of the issues involved in this case and, therefore, testimony with respect to it, I think, is perfectly appropriate and this is not political. This is testimony as to facts, as to what occurred and what incidents occurred at the site itself and, therefore, I respectfully submit is admissible.

THE COURT: It shows, Mr. Land, a condition voiced in a fashion, you referred to it as political. I don't know whether we would all agree with it. Here

THE COURT: Very well. Anything else?



was a group that belonged to Continue. They had a meeting and which they had a right to hold and those who were opposed to the meeting voided their objection, but doesn't that show the heat and the extent of the acrimony between different groups living almost side by side and doesn't it accentuate the very problem that we are asked to resolve? It has many aspects, this meeting. You can call it political and give a great deal of worthwhile discussion on that score, but, as a Judge, I'd say it is some evidence dealing with what we are here to resolve.

Your objection is overruled and a motion to strike on that score is denied.

Q Anything else with respect to meetings and conferences that might have occurred during this period from 1970 until the present time?

A At various times during -- from 1971, which is about what we are up to now, the beginning of '71, until the present time, we have had conferences with a large variety of people in government, legislators, city government people, state government people, federal government people, the substance of which --

Q You have been very helpful to the Court, I think, in being specific and telling us when these meet-

2 A In May.



ings occurred. Can you continue to give the Court the information in the same manner as you have been giving it up to now. Not just talking in generalities of a lot of meetings, but in terms of specific meetings, when they occurred, who was present and substantially what was said.

THE COURT: Have you got anything to add on that score other than what you have testified to? Were there any other meetings you wish to call my attention to? If so, I want to know where and when and so forth.

THE WITNESS: The spring of 1971, around April, we met with --

THE COURT: Who is we? Continue?

THE WITNESS: Continue, a group from Continue met with Mr. Green.

Q Is that Mr. William Green the regional director of HUD?

A The regional director of HUD. With concern about his funding of Site 30 which the Board of Estimate had recently approved, redesignated as an all low income building.

Mr. Green felt that it was not in his domain, told us specifically that it was not in HUD's domain

because it did not represent a major change in the Urban Renewal area.

He said a major change would have to be something like a residential site not being used as a residential site any longer.

THE COURT: I see.

THE WITNESS: But that changing it from one income level to another was not considered a major change.

We also went to Washington HUD, a meeting was held on June 24 of 1971 with a Mr. Butler, who was an aid to the secretary at HUD.

end t4b

Tk 5 PM

of the group?

Q Is that in Washington?

A Yes, in Washington.

Q How many people went down to Washington?

A There were four of us that went down .

Q Will you tell us who they were?

A Myself, Roberta Gratz, Mr.Ewen, I believe Mr. Karlan. We met with Mr. Butler.

Q Who is M r. Butler?

A I don't know. I guess I might be able to find out. We had written to Mr. Erlichman and Mr.Erlichman had referred us to the secretary at HUD and one of his assistant secretaries had met with us.

THE COURT: Strike that. That is not an answer. Next question.

Q Did you meet in the HUD building?

A We met in the HUD building in Washington.

Q In the HUD building in Washington?

A Yes.

Q Who was present on behalf of the Government?

A There was Mr. Butler. I don't know the names of the other people. He called two people in, one person he introduced as being from their contracts division.

Q And will you tell us what was said at that meeting by you and what was said by the Government people,

THE COURT: Did you tell it to him the very



in substance?

A We claimed that Site 30, the change in Site 30 to a different income status for building -- we considered a major change and we wanted to know whether HUD did and if HUD did would they allow the funding to go through on this basis.

They said that in agreement with what Mr. Green had told us that they did not feel that it represented a major change in the plan and so they could do nothing about funding or not funding it on that basis.

Q Was that all --

A That was all that happened at that meeting.

We also when we were there met with Senator Javits briefly at the Senate House, and Senator Javits wanted a report from us which we sent him. We didn't get a chance to speak to him more than five or ten minutes.

Q At the hearings before the Board of Estimate and the City Planning Commission in connection with the conversion of Sites 4 and 30 from middle-in come to low-income housing, did any representatives of Continue or any representatives of the area appear at those public hearings?

THE COURT: Yes or no.

A Yes.

THE COURT: Next question.

That was reported to the police department.





Q Will you tell us who appeared?

A None at 4.

THE COURT: None at 4?

THE WITNESS: None at the hearing for Site 4. We had just formed I think at the time that hearing was on and we knew nothing about it. At Site 30 there was a large number.

THE COURT: Were you there?

THE WITNESS: I was there just for a few minutes and I had to leave.

THE COURT: While you were there, do you remember how many people representing Continue were there?

THE WITNESS: There must have been 20 or 30 people from Continue.

Q Did they speak before the Board of Estimate, a public hearing?

A I did not hear them speak at the Board of Estimate.

THE COURT: Next question.

Q Were there any meetings which you can think of, Dr. Fine?

A There were innumerable planning board meetings, there were meetings at Stryker's Bay, there were --

Q Did Continue have occasion to meet with the people

Q YOu had eleven and now it is two, so there is



at Sryker's Bay?

A We met with the people at Stryker's Bay, with the executive committee at Styker's Bay, at the behest of Senator Blumenthal in an attempt to get together our points of view.

THE COURT: When was that, approximately?

THE WITNESS: Some time in late '72 or early '73, somewhere around there.

Q Where was the meeting held?

A It was held at the church on 90th Street, where Stryker's Bay usually has its meetings in.

Q How many people were present at the meeting, would you say?

A Twelve people.

Q A total of twelve on both sides?

A Yes, something like six or seven from each side.

Q Were you there?

A Yes.

Q Were you there through the entire meeting?

A Yes.

Q Would you tell us who was there from Continue and who was there from Stryker's Bay, to the best of your recollection?

A From Stryker's Bay there was Sandra Thomas,

Regional Administrator, HUD, New York City.



Father Farrelly. I don't recall the names of the others. They had at least four or five other people there.

Q Who was there from Continue?

A There was myself, there was Roberta Gratz, Roland Karlan, I think Gene Halpern, and two or three others.

Q Would you tell us what was said at that meeting by each of the people involved to the extent that you can recall?

A The issues that we discussed were -- I have to put it this way because I don't know who brought up the issues first. What was on the table were specifics that had to do with a plan to resolve the issues in the West Side Urban Renewal area. That had to do with both specific housing sites and it had to do with the disposition of the legal relocatees for the area and the squatter group in the area.

Q And what was said by the Continue people and what was said by the Stryker's Bay people?

A We and Stryker's Bay agreed that the legal relocatees of the area had to be serviced, that apartments had to be found for them and that there had to be a more intensive effort made to reach all of the individuals that would have legal relocatee status, and there was some feeling

that the city had been remiss on both sides in not working hard enough to contact the people to let them know of their rights. We both agreed that another mailing should go out and perhaps advertisements in certain papers should be placed by the city. El Diario and so on.

And we also agreed that we had to assess the needs of relocatees to make sure that there were sufficient and proper apartment sizes to house those relocatees in the remaining sites that were going up for the Urban Renewal area.

Until we knw some of this we were really in the dark as to how large and how many large apartments we needed, for example, and how many apartments we needed in general.

I am not sure what happened in terms of our discussion about the squatters. I know that we could not come, as I recall, to a conclusion about no additional all low-income housing.

Our group was presented a proposal that we did not feel any more low-income housing was necessary, but some sites should be safed at the end in case we couldn't get enough allocation in ones that were going up to house the legal relocatees or to fill the numbers that were needed.

Q Do you believe that Bedford Stuyvesant



And I believe the Stryker's Bay felt they needed to get the apartments right then while the funds were still available and we could not adjudicate that difference.

Q So then the meeting ended without agreement?

A The meeting ended with Father Farrelly's statement that we come to an agreement to disagree, which is a great deal more than we had before.

Q Is there a Dr. Arthur Logan who lives on your street or who lived, until he died, a few months ago?

A Yes,

Q Where does he live?

A 121 West 88th Street.

Q Is that the same block you live on?

A That's correct.

Q Did Dr. Arthur Logan participate in the Continue activities you describe?

A Fully. Dr. Logan was chairman --

THE COURT: "Fully" is the answer.

Next question.

Q Was he an active participant in Continue in an official capacity in any way?

A Yes. Dr. Logan was the first chairman of Continue and remained active in the things that we wrote, the plans

that we made and things that we did. He was a participant at some of these meetings I mentioned before. And for the first year and a half or so and then he got exceedingly busy --

THE COURT: I don't care. You have answered the question.

A Then he dropped out.

THE COURT: A year and a half or so.

Next question.

Q Dr. Logan died recently, isn't that so?

A Yes.

THE COURT: Yes, according to the witness.

Next question.

Q Is there anything else that you can recall whic you wish to tell the Court about as to meetings or other events that occurred with respbct to Continue and this problem?

A All during this period from April of 1970 until the present there have been, of my personal knowledg and my participation, literally hundreds of phone calls wi people like State Senator Ohrenstein and State Senator Blumenthal, various members of HDA, and many of the conversations were phone conversations, not formal meetings.

THE COURT: On behalf of Continue?

THE WITNESS: Yes.

THE COURT: Are you speaking on your own behalf?

THE WITNESS: Yes, sir.

THE COURT: What was the overall objective when you got on the phone with these different people? What were you attempting to accomplish?

THE WITNESS: Two things, sir. One, I was attempting frequently to ascertain information as to what was in the plans for the area since changes were sort of constantly being made, and, two, I was indicating that our group was steadfast in their belief that the area should be completed in accordance with the original plan and its amendment in 1966, and in accordance with its original philosophy and that in terms of merit there was no need to change.

THE COURT: I think I know what you mean. Would you define more accurately those words of summation that you just employed? What do you mean by agreement, originally understood and so forth? What exactly are you referring to?

THE WITNESS: Specifically, I'm referring to the original document, the West Side Urban Renewal area --

THE COURT: Which provided?

THE WITNESS: Which provided a plan that would

insure an economic and therefore an ethnic mix and revitalize a deteriorated neighborhood in the City of New York.

THE COURT: To what percentage was that?

THE WITNESS: There was no percentage that I know of.

THE COURT: What else?

THE WITNESS: There were numbers.

THE COURT: What numbers?

THE WITNESS: The numbers originally were as low as 400, in the plan I think it was 1000. In 1966 the plan was amended, I understand, to bring it to 2500 low-income units for the area.

THE COURT: There were some other general terms you employed. I don't want to lead you. What did you mean by them?

THE WITNESS: We were concerned that if the city continued to build up the numbers past the 2500 that we had all agreed to have low-income units, they similarly would be taking them away from the middle income and we felt that a turning point would be reached where middle income people would become disenchanted with the neighborhood and would move out.

We were also concerned with the use of 236 funded ing - this was a great deal of our conversation over the

last two years, that we felt the income limits on 236 were the same as the income limits on public housing and therefore in all the new buildings -- the last several two in addition that go up with 236 units in them, they were actually all low income and that was prejudicial to the original agreement, and we were also concerned on the third point, that the city was saying that we would put 30 per cent of low income in the house and they would take that 30 per cent in only the large amounts rather than across apartment sizes, so that actually 80 per cent of the population of the building was low income and all the children, more important, and therefore all the school children in the building were low income and we wanted the mix.

We wanted the 30 per cent of the five-room apartment, the four, the three, rather than all the five.

THE COURT: And those were the views you constantly, as I get it from you, calling to the attention of the public officials?

THE WITNESS: That's correct.

THE COURT: Is that what you are saying?

THE WITNESS: Yes.

THE COURT: On behalf of Continue?

THE WITNESS: Correct, sir.

THE COURT: Very well. Anything else?

MR. MORRIS: That is all, your Honor.

CROSS-EXAMINATION

BY MR. LAND:

Q Mr. Fine, I think you told us that you are the chairman of Continue, is that correct?

A Yes.

Q When did you become chair of CONTINUE?

A A year and a half ago, two years ago.

Q Prior to that time you became chairman, what office did you hold in CONTINUE?

A Co-chairman.

Q And for how long a period of time did you hold that position?

A Several months.

Q And prior to that time what was your office with CONTINUE?

A President.

Q How long a period of time did you hold that position?

A Several months.

Q Prior to that time what position did you hold?

A CONTINUE didn't exist.

Q That puts us back some time in maybe early 1970?

A In May.

Q In May of 1970, CONTINUE came into existence.

You moved into your new home on the West Side, I believe, in what, 1969, was it?

A January 1969.

Q And the incidents which you have given to us in respect to the threatening with the knife, broken windows, the firecrackers, the air rifle, the garbage, the back yard and the obscenities all occurred after May of 1970, correct?

A Correct.

Q I very definitely get the impression, Mr. Fine, that the individual abuse which was given to yourself and to your home may have been the result of the positions you asserted through your organization called CONTINUE, as opposed to you being an anonymous person living within the West Side area?

MR. MORRIS: Your Honor, I object to that.

THE COURT: That is argumentative. Objection sustained. That is an argument you can advance to the Court.

MR. LAND: Thank you, your Honor.

Q You testified that as to the people moving into the vacant brownstones across the street from your

position. Next question.





brownstone --

A I did not testify to that.

Q Maybe I was confused.

A Adjacent, not across.

Q Right next door?

A Yes, and they weren't brownstones. They were old law tenements.

Q Old law tenements. That those people spoke Spanish, is that correct?

A In the main, yes.

Q Do you speak Spanish?

A No.

Q In other words, you thought they were speaking Spanish?

A I knew they were speaking Spanish. I don't speak it, but I have taken a course in Spanish for two years.

THE COURT: Next question.

Q Did the individual who threatened you with a knife, did he speak to you in Spanish or English?

A English.

Q Was he in fact one of the persons who lived in the building adjacent to you?

A Who moved in or lived? You mean who was one

of the group?

Q Yes.

A To the best of my knowledge, yes.

Q You are not sure, though?

A I am not sure.

Q Did you call the police in respect to that incident with the knife?

A No.

Q Why not?

A I reported it to the policeman who was standing there.

Q Did you fill out a report?

A No.

Q Why not?

A The policeman said there are hot tempers all over the place here and he let it go at that, I let it go at that.

Q Was the policeman standing there when the man made the knife gesture?

A No, the policeman wasn't standing there. It was subsequent. I walked away and there were some policemen standing on the further corner.

THE COURT: All right, we understand.

A I met him and I told him.

THE COURT: You have?



THE COURT: Did you tell it to him the very day of the incident?

THE WITNESS: Yes, shortly after.

Q He said something about hot tempers and forget about it?

A Yes.

Q Did you report the incident of any of the broken windows to the police?

A Yes.

Q And what was the result of those reports?

A Well, the police came up and looked at the windows and saw that they were broken, wrote them down and left.

Q Again something to the effect hot tempers?

A No, the police didn't say anything like that.

THE COURT: Did you hear anything further on that score?

THE WITNESS: No, nothing further.

THE COURT: Next question.

Q After the youngsters, you testified, threw firecrackers at your dog and you chased the kid around the block and they ran into an apartment building and another youngster said, "Yes, those kids live here," did you report that incident to the police?

thought, Judge, is that right?



That was reported to the police department.

Q By yourself?

A Myself and my wife.

Q Do you know what the outcome of that was?

A No. I can tell you generally.

Q You testified that prior to the renovation of your building it was approximately a 10-unit tenement, a 10-unit tenement?

A No, more like 13 or 14 units.

Q Thirteen or 14 families?

A No.

Q Units, a unit being one living quarter?

A Yes.

Q For an individual or his family, right?

A Yes.

Q Now your building has only two units in it, is that correct?

A Correct.

Q Would I be correct in assuming that by reason of the redevelopment of your brownstone there was an elimination from the West Side area of nine dwelling units, is that correct?

A No, it is not correct. You asked me a question, and the answer --

Q YOu had eleven and now it is two, so there is an elimination of nine, is that correct?

A These were all single room units with the exception of one. We have multiplicity of bedrooms. So are we talking about individuals or about apartments? I don't know. We have eight people now living in the house and prior to that the house had about 14 people in it. So there is a difference of four people. It made no difference. It had to be changed anyway.

Q Dr.Fine, did there ever come an occasion when you wrote a letter to Mr.Green, the regional administrator of the Housing and Urban Development Agency?

A I wrote several letters, sir.

Q Do you recall writing a letter dated April 14, 1972, which is annexed as an exhibit to Government Exhibit E, which I show you? This letter here.

A You have to let me see it.

(Pause.)

A Yes.

THE COURT: What is the date of it, Mr. Land?

MR. LAND: April 14, 1972.

THE COURT: Addressed to the Commissioner or director?

MR. LAND: Addressed to Mr. S.William Green,

Regional Administrator, HUD, New York City.

THE COURT: That identifies it.

What does that say in essence, Mr. Land?

MR. LAND: Your Honor, I am not really sure. It is in evidence.

THE COURT: That is not very helpful. Let me look at it. The Court has a right to be edified. If you don't want to do it, I will have to undertake to do it myself.

Give me a chance to look at it.

(Pause.)

THE COURT: I can understand why you wouldn't undertake to give me an answer, because your answer would have to be as long as the letter itself. It is a letter in which there is a protest and many items are called to the attention of the Administrator and it is done in terse and positive language and it covers a multitude of items.

All right. I have it, at least the general import.

Q Mr. Fine, in this letter you make the following statement, and I quote from the bottom of Page 2 and the top of Page 3 of that letter of April 14, 1972.

"As citizens and taxpayers, we cannot help but to look to your agency, the prior source of building

funds, to follow the new Federal guidelines so as to insure that other areas and communities absorb their fair share of low income families."

Do you recall making that statement?

A Yes, sir.

Q The letter itself does not indicate what is a fair share of low income families, but presumably you have some idea of what a fair share is, don't you?

A Yes, sir.

End 5 PM

Q Do you believe that Bedford Stuyvesant currently has more or less than its fair share of low income families?

A More, sir.

Q Do you know approximately the percentage of low income families residing in Bedford Stuyvesant?

THE COURT: Do you know?.

A No, sir.

THE COURT: Next question.

Q Do you have any knowledge at all about Bedford Stuyvesant?

A Yes, sir.

Q Do you believe it has more than, let's say, 50 percent of the people living there that are of low income?

A I believe it is probably closer to 90 percent.

THE COURT: Next question.

MR. LAND: Thank you.

Q In your opinion does East Harlem have more or less than its fair share of low income families?

A I believe it has much more than its fair share.

Q Would you again say that approximately 90

percent of the people living there are of low income?

A 80-90 percent.

MR. LAND: Thank you.

Q Do you believe that Hunts Point has more or less than its fair share of low income families?

MR. MORRIS: Your Honor, I will object to this. It is too tangential to the issues in this proceeding.

THE COURT: No, it goes to the issue as to whether the witness' statements with regard to the area that we are concerned with is exaggerated or motivated as a result of emotional reactions to situations that might very well be argued that his testimony on these crucial issues before me should be taken with a grain of salt.

Objection overruled. I will allow it.

MR. LAND: Would you read the question, please, sir.

(Read.)

A I believe more, but I have never been to Hunts Point. I have been to both of the other places you mentioned.

Q Would you similarly say that Hunts Point has approximately 80 or 90 percent of low income

families?

A That I cannot. I don't have any belief on that.

Q Do you have any idea how many low income families are in Hunts Point?

A No.

Q You have no idea?

A No.

Q You never had any idea?

A No.

MR. LAND: Thank you.

Q Do you know anything about Central Harlem?

A Yes.

Q Do you know whether or not Central Harlem has more or less than its fair share of low income families?

A I would say more.

Q Would you also characterize that as being in the 80 or 90 percent range?

A Probably less.

Q 65-70?

A I don't know.

THE COURT: Next question.

Q I would like to read a sentence to you from

the paragraph on page two of your letter of April 14, 1972.

THE COURT: To Mr. Green.

Q To Mr. Green, which you signed, and it reads: "Even if we were to include the rehabilitated brownstones and the conversion areas (though most of the latter group are on Central Park West and therefor the fringe area) the low income percentage for the area remains above 30 percent" -- and the area you are referring to, I presume, is the West Side urban renewal area and you are referring to 30 percent low income housing; is that correct?

A That is correct.

Q Then you follow with this interesting sentence: "That percentage is equivalent to Central and East Harlem, Bedford Stuyvesant and Hunts Point"; is that correct?

A Yes. It was in response to a New York Times graph, a chart of a map of New York which indicated density of welfare population.

Q So, in this letter is it fair to conclude that you are equating the West Side urban renewal area with Central and East Harlem, Bedford Stuyvesant and Hunts Point?

A In terms of that chart, yes.

MR. LAND: Thank you.

Q Mr. Fine, what would be the fair share of low income families, the percentage of low income families, that is the percentage of the total population, to reside in the West Side area?

MR. MORRIS: Your Honor, may I hear that question?

THE COURT: Yes. I didn't quite get it, sir.

MR. LAND: I will rephrase it, your Honor.

THE COURT: All right, withdrawn. Reframe it.

Q Mr. Fine, in your opinion what would be the percentage of low income families which would be the fair share of low income families to reside within the West Side area?

THE COURT: What do you mean "the West Side area"?

MR. LAND: The West Side renewal area.

THE COURT: All right.

A Overall between 15 to 20 percent.

THE COURT: When you say "overall", what do you mean? You mean if you took all the tenants which are within the urban renewal area and you made inquiry

as to whether they were middle income or low income and the inquiry was soundly predicated, that the percentage of low income should be 15 to 20 percent of the total; is that what you mean?

THE WITNESS: A maximum of 20 percent. More towards 15. As you say, your Honor, yes.

THE COURT: All right.

Q Dr. Fine, do you know what the percentage of low income people is as to the total population in all of New York City?

A No, I am not sure of that.

THE COURT: All right, next question.

Q Do you have any approximation or estimation?

THE COURT: It won't mean a hoot to me. He says he doesn't know.

You have a right in this sense to show that the witness is reckless with his testimony. That I have got to give you a chance to do. Whether or not you succeed is another matter.

Does he bite for anything that comes across the plate? That you have got a right to do, too. If you want it for that purpose, why go ahead.

Q When you used the phrase "community taking its fair share," do you mean by that phrase that each

community should have approximately the same percentage of low income people as any other community?

A Not necessarily. I believe that every community, suburbs, area in the City should have some low income population as part of it. I don't think that it should be separated into ghettoized areas.

Q Should the percentage of low income people be approximately the same in each community?

A No, not necessarily.

Q In other words, a fair share for one community might be 30 or 40 percent of low income and another community it may be as low as 15 percent, would that be a proper characterization of your testimony?

A You may be a little high on the 30 to 40 percent.

Q What is the highest percentage of low income people residing in any community which would be the maximum in order for them to have a fair share, so that the excess would become unfair?

A I would say approximately 30 percent, if that 30 percent is spread throughout the given community and not locked in a single large unit within a larger community that segregates itself from it.

THE COURT: That is an answer. That is your

position. Next question.

Q Dr. Fine, in your testimony I believe you have told us that you first became aware of a projection of 2500 units of low income apartments for the West Side Urban Renewal area in 1966, is that correct?

A Yes.

Q Do you know whether or not prior to 1966 any agency or official of the City of New York made any statement in respect to having at least 2500 units of low income apartments in the West Side Urban Renewal area?

A I don't understand the question.

MR. LAND: I will rephase it.

THE WITNESS: Would you.

Q Do you know -- let me scratch that.

THE COURT: You think about it because we are never going to get through with the witness at this rate today. Gentlemen, we have come to the end of a trial day. You have things to do at your office and I have things to do in chambers.

In registering your protest to my comment in a moment, will you kindly keep the protest quiet and not let it get out of bounds. I suggest that we meet early tomorrow. Now that gives you a chance to control your

protect.

MR. MORRIS: Your Honor, before we get to that, Mr. Fine, Dr. Fine, rather, has explained to me that he has an active practice as a psychologist which he conduts in the mornings and that he was able to be here with us this afternoon, but am I correct, Doctor, in saying that you cannot be here tomorrow morning?

THE WITNESS: My practice is in the morning and afternoon. It takes me a while to rearrange it. I work with some seriously disabled people.

I can arrange to be here on Monday afternoons and Thursday afternoons. I can do it otherwise, but it is a great dislocation to my patients.

THE COURT: I can appreciate that and we will try to accommodate you, Doctor. These people that you are serving need your services undoubtedly so what is the best time that you will be available. You see, your testimony has yet to be questioned, your cross-examination has yet to be had and I don't know how long the attorneys are going to take. I think we owe it to the witness in light of what he has just said to give him an indication of about how long. How much more time do you think?

MR. LAND: Your Honor, I am now finished.

THE COURT: You have?

MR. LAND: I have.

THE COURT: What do you think, Mr. Gold?

MR. GOLD: I would imagine less than half an hour, sir.

THE COURT: What do you say, Mr. Douw?

MR. DOUW: I would say perhaps an hour, your Honor.

THE COURT: I see, all right. Then --

THE WITNESS: Monday afternoon, is that possible, sir?

THE COURT: Monday afternoon, surely, we will accommodate you Monday afternoon. The Court directs that we set aside everything else and have Dr. Fine available this coming Monday afternoon, April 29, at 2:00 o'clock.

THE WITNESS: I appreciate it very much, sir.

THE COURT: All right. What do you say as to tomorrow? Would you rather at 10:00 o'clock, speak frankly. It is too sudden to ask you to come at 8:00 o'clock, 8:30, 9:00 o'clock, 9:30, or shouldn't I think of the idea at all? Looking at your face, Mr. Morris, I would judge that you are trying to say banish the

thought, Judge, is that right?

MR. MORRIS: Not quite, your Honor. I was here before 9:00 o'clock this morning and getting here at 9:00 o'clock is no problem for me.

THE COURT: Gentlemen, what do you say, Mr. Gold?

If you cannot, tell me so I will understand.

MR. GOLD: I will be very frank with you, Judge.

THE COURT: You had better be, you have no choice.

MR. GOLD: The balance of my legal life during this trial is taken care of between 7:30 and about twenty to 10:00 in the morning.

THE COURT: That is a perfect answer. 10:00 o'clock tomorrow morning. Announce a recess.

MR. GOLD: Thank you.

(Recess at 4:45 p.m.)

(Trial adjourned to April 26, 1974 at 10:00 o'clock a.m.)

## WITNESS INDEX

| Name | Direct | Cross | Redirect | Recross |
|---|---|---|---|---|
| Alvin C. Hudgins | 1169 | 1225 | 1280 | 1282 |
| Jerome L. Fine | 1286 | 1352 | | |

ENTERED [illegible]

## EXHIBIT INDEX

| Plaintiff | Identification | In Evidence |
|---|---|---|
| 30 | | 1164 |
| 31 | | 1166 |
| 35 | 1184 | |
| 35-A | 1188 | 1197,1199 |
| 35A(1) | 1191 | |
| 36 | 1199 | |
| 36A,36B | | 1201 |

| Defendant | | |
|---|---|---|
| J | 1275 | |